

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 CUC DANG,

5 PLAINTIFF,

CASE NO. CV-10-02181-RMW

6 VS.

SAN JOSE, CALIFORNIA

7 SUTTER'S PLACE, INC., DBA BAY  
101 OR BAY 101 CASINO, UNITE  
8 HERE! LOCAL 19, AND DOES 1  
THROUGH 20, INCLUSIVE,

MAY 2, 2013

VOLUME 3

PAGES 313 - 476

9 DEFENDANTS.

10  
11 TRANSCRIPT OF TRIAL  
12 BEFORE THE HONORABLE RONALD M. WHYTE  
UNITED STATES DISTRICT JUDGE AND A JURY

13 A-P-P-E-A-R-A-N-C-E-S

14 FOR THE PLAINTIFF: ROBINSON & WOOD, INC.  
15 BY: ANN A.P. NGUYEN  
BONNIE MARGARET ROSS  
16 227 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95113

17 ALSO PRESENT: ANDRE THOMAS

18 FOR THE DEFENDANTS: MCMANIS FAULKNER  
19 BY: JAMES MCMANIS  
JENNIFER MURAKAMI  
20 FAIRMONT PLAZA  
10TH FLOOR  
21 50 W. SAN FERNANDO STREET  
SAN JOSE, CALIFORNIA 95113

22 ALSO PRESENT: CINDY MCCLELEN

23 OFFICIAL COURT REPORTERS: IRENE L. RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074  
24 LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,  
TRANSCRIPT PRODUCED WITH COMPUTER

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1 SAN JOSE, CALIFORNIA

MAY 2, 2013

2 P R O C E E D I N G S

3 (JURY IN AT 8:32.)

4 THE COURT: ALL RIGHT. IS EVERYBODY READY TO  
5 PROCEED?

6 MR. MCMANIS: YES, YOUR HONOR.

7 MS. MURAKAMI: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. PLEASE DO.

9 (PLAINTIFF'S WITNESS, JENNIFER GILBERT, PREVIOUSLY SWORN.)

10 **AS-ON DIRECT EXAMINATION (RESUMED)**

11 BY MS. MURAKAMI:

12 Q. GOOD MORNING, MS. GILBERT.

13 A. GOOD MORNING.

14 MS. MURAKAMI: YOUR HONOR, MAY I CONTINUE TO  
15 APPROACH THE WITNESS TO HELP HER WITH THE BINDERS?

16 THE COURT: SURE.

17 MS. MURAKAMI: THANK YOU.

18 Q. COULD YOU PLEASE TURN TO TAB 502?

19 A. OKAY.

20 Q. DO YOU RECOGNIZE THIS DOCUMENT?

21 A. YES. IT'S AN APPLICATION FOR EMPLOYMENT FOR BAY 101.

22 Q. AND IS IT THE APPLICATION OF A PARTICULAR EMPLOYEE?

23 A. YES, MS. DANG.

24 Q. THANK YOU. AND WHAT IS THE DATE ON THAT DOCUMENT?

25 A. JUNE 19TH, 2006.

1 Q. AND IS -- ARE EMPLOYMENT APPLICATIONS MAINTAINED BY YOUR  
2 AGENT OFFICE?

3 A. YES, THEY ARE.

4 MS. MURAKAMI: YOUR HONOR, WE OFFER EXHIBIT 502 INTO  
5 EVIDENCE.

6 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

7 THE COURT: 502 IS RECEIVED.

8 MS. MURAKAMI: THANK YOU.

9 (DEFENDANT'S EXHIBIT 502 WAS RECEIVED IN EVIDENCE.)

10 BY MS. MURAKAMI:

11 Q. AND JUST TO CLOSE SOME LOOPS ON A COUPLE OF TOPICS WE  
12 TALKED ABOUT YESTERDAY, COULD YOU PLEASE TURN TO 520 IN THAT  
13 BINDER?

14 A. 520?

15 Q. YES.

16 A. ALL RIGHT.

17 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

18 A. YES. IT'S A SIGN-IN SHEET FOR ANNUAL TRAINING.

19 Q. AND WHAT IS THE DATE ON THAT FORM?

20 A. IT'S MONDAY, AUGUST 6TH, 2007.

21 Q. AND DO YOU SEE MS. DANG'S NAME ON THIS DOCUMENT?

22 A. YES. SHE'S THE FOURTH FROM THE BOTTOM ON THE FIRST PAGE.

23 Q. AND DID SHE SIGN THE SIGN-IN SHEET?

24 A. YES. SHE SIGNED IN AND SHE SIGNED OUT.

25 MS. MURAKAMI: YOUR HONOR, I OFFER EXHIBIT 520 INTO

1 EVIDENCE.

2 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

3 THE COURT: IT MAY BE RECEIVED.

4 MS. MURAKAMI: THANK YOU.

5 (DEFENDANT'S EXHIBIT 520 WAS RECEIVED IN EVIDENCE.)

6 BY MS. MURAKAMI:

7 Q. AND COULD YOU PLEASE TURN TO THE NEXT TAB 521?

8 A. OKAY.

9 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

10 A. YES. IT'S A UNION CONTRACT.

11 Q. AND ARE WORKERS -- ARE SOME WORKERS AT BAY 101 IN THE  
12 UNION?

13 A. YES.

14 Q. AND WHICH KINDS OF WORKERS ARE TYPICALLY IN THE UNION?

15 A. FOOD AND BEVERAGE, FOOD SERVICES, FACILITIES,  
16 HOUSEKEEPING, AND PBX OPERATORS.

17 MS. MURAKAMI: YOUR HONOR, WE OFFER EXHIBIT 521 INTO  
18 EVIDENCE.

19 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

20 THE COURT: 521 IS RECEIVED. THANK YOU.

21 (DEFENDANT'S EXHIBIT 521 WAS RECEIVED IN EVIDENCE.)

22 MS. MURAKAMI: YOUR HONOR, AS TO EXHIBIT 1000, WE  
23 HAVE A STIPULATION AS TO THE ADMISSION OF THIS EXHIBIT.

24 MAY I PUBLISH IT?

25 THE COURT: SURE.

1 BY MS. MURAKAMI:

2 Q. AND DO YOU RECOGNIZE THIS EXHIBIT?

3 A. YES.

4 Q. AND WHAT IS IT?

5 A. IT'S A TRACKING SHEET FOR REST BREAKS AND MEAL BREAKS.

6 Q. AND WHICH DEPARTMENT IS IT FOR?

7 A. IT'S FOR DEPARTMENT 20.

8 Q. AND WHAT IS DEPARTMENT 20?

9 A. IT'S FOOD AND BEVERAGE IN THE KITCHEN.

10 Q. THANK YOU.

11 YOUR HONOR, I OFFER EXHIBIT 1000 INTO EVIDENCE.

12 THE COURT: ALL RIGHT. I TAKE IT THE STIPULATION  
13 WAS THAT IT COULD BE ADMITTED.

14 MS. MURAKAMI: OKAY.

15 MS. NGUYEN: YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. IT'S ADMITTED.

17 MS. MURAKAMI: THANK YOU.

18 (DEFENDANT'S EXHIBIT 1000 WAS RECEIVED IN EVIDENCE.)

19 MS. MURAKAMI: CINDY, COULD YOU PLEASE GO TO BATES  
20 STAMP BAY 00013? OH, YOU'RE ALREADY THERE. YOU READ MY MIND.

21 Q. WHAT IS THE DATE ON THIS DOCUMENT?

22 A. I'M SORRY.

23 Q. IS IT TOO FAR AWAY TO SEE THE DATE ON THERE?

24 A. I'M SORRY. IT LOOKS LIKE JULY 10TH, 2006. IS THAT  
25 CORRECT? OH, SORRY. JULY 30TH, 2006.

1 Q. AND IS THIS AN EXAMPLE OF ONE OF THE DAILY TRACKING SHEETS  
2 FROM THAT YEAR?

3 A. YES.

4 MS. MURAKAMI: AND, CINDY, COULD YOU PLEASE GO TO  
5 BAY 00319? COULD YOU PULL IT UP A LITTLE BIT?

6 Q. AND WHAT IS THE DATE OF THIS DAILY TRACKING SHEET?

7 A. IT LOOKS LIKE MARCH 8TH, 2007.

8 Q. AND CAN YOU JUST EXPLAIN TO THE JURY WHAT EACH OF THE  
9 COLUMNS MEAN?

10 A. OKAY. THE EMPLOYEE'S NAME IS LISTED; AND THEN THERE'S A  
11 COLUMN FOR THEIR IN TIME FOR THE DAY; THE START TIME OF THEIR  
12 FIRST BREAK; THE END TIME OF THEIR FIRST BREAK; THE START TIME  
13 OF THEIR LUNCH PERIOD; THE END TIME OF THEIR LUNCH; THE START  
14 TIME OF THEIR SECOND BREAK; THE END TIME OF THEIR SECOND BREAK;  
15 THEIR OUT PER DAY TIME; AND THE SUPERVISOR'S INITIALS IS THE  
16 LAST COLUMN.

17 Q. THANK YOU.

18 CINDY, COULD YOU PLEASE GO TO BAY 789.

19 AND WHAT IS THE DATE ON THIS DAILY TRACKING SHEET?

20 A. JULY 2ND, 2008.

21 Q. AND IS THERE A REASON WHY THIS TRACKING SHEET HAS FEWER  
22 COLUMNS THAN THE ONE WE JUST LOOKED AT FROM 2007?

23 A. YES. BECAUSE THEIR LUNCHESES ARE PUNCHED IN AND OUT ON THE  
24 CLOCK, SO THERE'S NO REASON TO RECORD THEM.

25 Q. SO EMPLOYEES ONLY WRITE DOWN THEIR IN AND OUT FOR BREAK



1 TIMES?

2 A. CORRECT.

3 Q. OKAY. AND BAY 1047, PLEASE.

4 AND WHAT IS THE DATE OF THIS DOCUMENT?

5 A. APRIL 10TH, 2009.

6 Q. AND ARE THESE THE BREAK SHEETS THAT ARE CURRENTLY USED AT  
7 BAY 101?

8 A. YES, YES.

9 Q. THANKS, CINDY.

10 I'M GOING TO GO BACK TO EXHIBIT 1007, WHICH WE ADMITTED  
11 YESTERDAY.

12 CINDY, IF YOU COULD PUT THAT UP.

13 SO I ASKED YOU A COUPLE OF QUESTIONS ABOUT THIS MEMO  
14 YESTERDAY. I JUST WANT SOME CLARIFICATION ON WHERE EXACTLY WAS  
15 THIS MEMO POSTED?

16 A. OKAY. NUMEROUS PLACES THROUGHOUT THE BUILDING. THEY WERE  
17 POSTED BY THE TIME CLOCKS, IN THE EMPLOYEE BREAK ROOM, IN THE  
18 EMPLOYEE CAFETERIA. THEY'RE POSTED IN BINDERS ON BOTH SIDES OF  
19 THE CASINO FLOOR AND USUALLY POSTED ON THE H.R. DOOR.

20 Q. THANK YOU.

21 1008. CAN YOU BLOW IT UP A LITTLE MORE, THE TEXT?

22 MS. MCCLELEN: THIS PART OR PORTIONS?

23 MS. MURAKAMI: JUST THE MAIN PART.

24 Q. OKAY. AND THIS IS EXHIBIT 1008, WHICH I ALSO ASKED YOU  
25 ABOUT YESTERDAY.

1 AND WHERE WAS THIS MEMO POSTED IN BAY 101?

2 A. IN ALL OF THE SAME PLACES.

3 Q. THANK YOU.

4 COULD YOU PLEASE TURN TO TAB 1009.

5 A. OKAY.

6 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

7 A. YES. IT'S A CHECK DIRECT DEPOSIT REGISTER.

8 Q. IS IT FOR A PARTICULAR EMPLOYEE?

9 A. YES, IT'S FOR MS. DANG.

10 Q. AND WHAT ARE THE DATES OF THIS DEPOSIT REGISTER?

11 A. JULY 6TH, 2006, THROUGH DECEMBER 21ST, 2009.

12 Q. AND ARE THOSE THE DATES OF MS. DANG'S EMPLOYMENT AT  
13 BAY 101?

14 A. YES, THEY WERE.

15 Q. AND HOW IS THIS REPORT GENERATED?

16 A. IT'S GENERATED FROM OUR PAYROLL PROGRAM.

17 Q. AND IS THE PAYROLL PROGRAM MAINTAINED BY YOUR H.R. OFFICE?

18 A. YES, IT IS.

19 MS. MURAKAMI: YOUR HONOR, WE OFFER EXHIBIT 1009.

20 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

21 THE COURT: ALL RIGHT. 1009 IS ADMITTED.

22 MS. MURAKAMI: THANK YOU.

23 (DEFENDANT'S EXHIBIT 1009 WAS RECEIVED IN EVIDENCE.)

24 MS. MURAKAMI: CINDY, COULD YOU PLEASE GO TO BAY  
25 1516. BLOW UP THAT BOTTOM PORTION. OKAY.

1 Q. SO I'M SHOWING YOU HERE AN EXAMPLE FROM JULY 17TH, 2009.  
2 COULD YOU PLEASE GO THROUGH THE FIRST COLUMN AND EXPLAIN TO THE  
3 JURY WHAT EACH OF THOSE LINE ITEMS MEANS?

4 A. OKAY. THE FIRST LINE ARE -- IS THE REGULAR HOURS FOR THE  
5 FIRST WEEK OF THE PAY PERIOD; THE SECOND LINE ARE THE REGULAR  
6 HOURS FOR THE SECOND WEEK OF THE PAY PERIOD; THE THIRD LINE ARE  
7 MEALS FOR THE FIRST PAY PERIOD -- THE FIRST WEEK OF THE PAY  
8 PERIOD; THE FOURTH LINE ARE MEALS FOR THE SECOND PAY PERIOD --  
9 OR EXCUSE ME, THE SECOND WEEK OF THE PAY PERIOD; AND THE FIFTH  
10 LINE IS VACATION TIME; THE SIXTH LINE IS DECLARED TIPS; AND THE  
11 SEVENTH LINE IS UNION MEAL, WHICH IS A TAX ONLY MEAL.

12 Q. THANK YOU. COULD YOU PLEASE DO THE SAME FOR THE SECOND  
13 COLUMN?

14 A. SURE. THE FIRST IS THE CALIFORNIA INCOME TAX AMOUNT; THE  
15 SECOND IS THE CALIFORNIA SDI AMOUNT; THE THIRD IS THE FEDERAL  
16 INCOME TAX AMOUNT; THE FOURTH IS THE MEDICARE AMOUNT; AND THE  
17 FIFTH IS THE SOCIAL SECURITY AMOUNT.

18 Q. AND THE LAST COLUMN, PLEASE?

19 A. THE LAST -- THE THIRD COLUMN IS FOR DEDUCTIONS AND THERE  
20 WAS A DEDUCTION TAKEN FOR UNION DUES.

21 Q. THANK YOU.

22 CINDY, 1502, PLEASE. COULD YOU PLEASE PUT UP THE LAST  
23 THIRD OR SO. OKAY.

24 THESE ARE A COUPLE OF EXAMPLES FROM 2006. DO ANY OF THESE  
25 SHOW THAT MS. DANG WAS PAID OVERTIME?

1 A. YES, ALL THREE OF THESE CHECKS HAVE OVERTIME ON THEM.

2 MS. MURAKAMI: CINDY, COULD YOU PLEASE HIGHLIGHT  
3 THOSE. YOU DID THEN ONE AT A TIME. OKAY. THAT'S FINE.

4 Q. COULD YOU PLEASE GO TO 1508.

5 A. OKAY.

6 Q. AND TO YOUR KNOWLEDGE, WAS MS. DANG EVER PAID PREMIUM PAY  
7 FOR MISSING A MEAL PERIOD OR TAKING A MEAL FOR LESS THAN  
8 30 MINUTES?

9 A. YES, SHE WAS.

10 Q. AND WHERE ON THIS DEPOSIT REGISTER WOULD THAT BE  
11 REFLECTED?

12 A. THE THIRD LINE ON THE LEFT-HAND COLUMN, LUNCH ADJUSTMENT,  
13 LUNCH ADJUST.

14 Q. AND I DON'T KNOW, CAN YOU SEE THE ACTUAL NUMBERS?

15 A. IT SAYS TWO.

16 Q. OKAY. SO SHE WAS TAKING -- GIVEN TWO HOURS OF LUNCH  
17 ADJUSTMENT. HOW MANY LUNCHESES DID SHE MISS?

18 A. THAT WOULD BE --

19 Q. OR TAKE LESS THAN 30 MINUTES?

20 A. THAT WOULD HAVE BEEN HER TWO.

21 Q. AND COULD YOU PLEASE TURN TO EXHIBIT 1010 -- OH, I'M  
22 SORRY.

23 A. 1010?

24 Q. OH, IS THAT IN THE SAME BINDER?

25 A. YEAH.

1 Q. OKAY. AND DO YOU RECOGNIZE THIS DOCUMENT?

2 A. YES, IT'S MS. DANG'S PAY STUB FOR THE PAY PERIOD ENDING  
3 JULY 26TH, 2009.

4 Q. AND ARE THERE MULTIPLE PAGES IN THIS DOCUMENT?

5 A. YES.

6 Q. ARE THESE ALL OF MS. DANG'S PAY STUBS?

7 A. IT APPEARS TO BE. HOWEVER, THEY'RE NOT IN DATE ORDER, SO  
8 I CAN'T SAY FOR SURE.

9 Q. I APOLOGIZE FOR THAT.

10 YOUR HONOR, WE OFFER EXHIBIT 1010.

11 THE COURT: ALL RIGHT. IT MAY BE RECEIVED.

12 MS. MURAKAMI: THANK YOU.

13 (DEFENDANT'S EXHIBIT 1010 WAS RECEIVED IN EVIDENCE.)

14 BY MS. MURAKAMI:

15 Q. NOW, ARE EMPLOYEES DISCIPLINED FOR FAILING TO TAKE THEIR  
16 30 MEAL BREAKS?

17 A. YES.

18 Q. AND DURING MS. DANG'S EMPLOYMENT PERIOD FROM 2006 TO 2009,  
19 WERE EMPLOYEES DISCIPLINED FOR FAILING TO TAKE LESS THAN 30  
20 MEAL BREAKS?

21 A. YES, THEY WERE.

22 Q. AND DURING MS. DANG'S EMPLOYMENT, WERE EMPLOYEES  
23 DISCIPLINED IF THEY TOOK 29-MINUTE BREAKS?

24 A. YES.

25 Q. AND WHY DOES ONE MINUTE MAKE A DIFFERENCE?

1 A. BECAUSE CALIFORNIA LAW STATES 30 MINUTES.

2 Q. AND DURING MS. DANG'S EMPLOYMENT, WERE EMPLOYEES  
3 DISCIPLINED FOR TAKING MORE THAN 30 MINUTES?

4 A. THAT WAS LEFT UP TO THE DEPARTMENT.

5 Q. AND DID MS. DANG EVER RECEIVE COUNSELLING MEMOS FOR MEAL  
6 BREAK VIOLATIONS?

7 A. YES, SHE DID.

8 Q. AND DURING MS. DANG'S EMPLOYMENT AT BAY 101, DID SHE EVER  
9 FILE A COMPLAINT IN THE H.R. DEPARTMENT STATING THAT SHE WASN'T  
10 ALLOWED TO TAKE A MEAL OR A REST BREAK?

11 A. NO, SHE DID NOT.

12 Q. AND DO YOU RECEIVE A NOTICE WHEN AN EMPLOYEE FILES A  
13 GRIEVANCE WITH THEIR UNION?

14 A. YES, WE DID.

15 Q. AND DID MS. DANG EVER FILE A GRIEVANCE FOR MEAL AND REST  
16 BREAKS?

17 A. NO, SHE DID NOT.

18 Q. HAS ANY EMPLOYEE COME TO YOU AND SAID THAT THEY HAVE NOT  
19 BEEN ABLE TO TAKE THEIR 30 MEAL BREAK OR REST BREAK?

20 A. NO, THEY HAVE NOT.

21 Q. THANK YOU.

22 NOW, I WANT TO GO BACK TO THIS CANDY INCIDENT THAT YOU  
23 TALKED ABOUT YESTERDAY, OR YOU TALKED WITH COUNSEL ABOUT  
24 YESTERDAY.

25 DO YOU RECALL THAT INCIDENT?

1 A. YES.

2 Q. AND HOW DID YOU FIND OUT ABOUT THE INCIDENT?

3 A. I BELIEVE THE SHIFT MANAGER THAT WAS ON DUTY AT THE TIME  
4 REPORTED IT TO ME.

5 Q. AND WHICH SHIFT MANAGER WAS THAT?

6 A. IT WOULD HAVE BEEN MIKE WILSON.

7 Q. AND WHAT DID YOU DO AFTER YOU LEARNED ABOUT THIS INCIDENT?

8 A. I NOTIFIED JOHN ST. CROIX AND WE CONTACTED SURVEILLANCE  
9 AND SET UP A TIME TO REVIEW THE TAPE OF THE INCIDENT.

10 Q. AND ABOUT HOW MUCH TIME PASSED BETWEEN THE TIME YOU WERE  
11 INFORMED ABOUT THE INCIDENT, PASSED BETWEEN THAT TIME AND THE  
12 TIME YOU REVIEWED THE SURVEILLANCE VIDEO?

13 A. I BELIEVE WE REVIEWED IT THE NEXT MORNING.

14 Q. AND WHAT DID YOU OBSERVE ON THAT VIDEO?

15 A. THERE WAS A GROUP OF I BELIEVE FOUR COOKS, MS. DANG WAS  
16 ONE OF THEM, AND THEY APPEARED TO BE TALKING AND THEY APPEARED  
17 TO BE LAUGHING. THERE WAS NO AUDIO SO I DON'T KNOW WHAT WAS  
18 BEING SAID.

19 AND AT ONE POINT ONE OF THE COOKS REACHED OUT AND APPEARED  
20 TO BE TAKING OUT CANDY OUT OF MS. DANG'S POCKET. THEY ALL HAD  
21 SMOCKS ON.

22 Q. AND DID YOU SPEAK WITH MS. DANG ABOUT THIS INCIDENT  
23 SHORTLY AFTER IT HAPPENED?

24 A. YES.

25 Q. AND WHAT DID MS. DANG TELL YOU ABOUT THE INCIDENT?

1 A. SHE SAID THAT IT MADE HER VERY UNCOMFORTABLE AND THAT HE  
2 SHOULD NOT HAVE TAKEN THE CANDY WITHOUT ASKING.

3 Q. DO YOU REMEMBER WHICH EMPLOYEE IT WAS THAT HAD REACHED  
4 INTO HER POCKET?

5 A. I REMEMBER HIS FIRST NAME WAS RUDOLPH.

6 Q. AND SO IT WAS NOT LUCIO SUAREZ?

7 A. NO, IT WAS NOT.

8 Q. AND WAS THAT EMPLOYEE DISCIPLINED FOR REACHING INTO  
9 MS. DANG'S POCKET?

10 A. YES, HE WAS.

11 Q. AND WHAT FORM OF DISCIPLINE WAS THAT?

12 A. HE RECEIVED TWO DAYS SUSPENSION.

13 Q. OKAY. THANK YOU.

14 SWITCHING GEARS NOW. DO YOU RECALL AN INCIDENT REGARDING  
15 MS. DANG AND LINDA ELIAS IN OCTOBER OF 2009?

16 A. 2009?

17 Q. YES.

18 A. YES.

19 Q. AND MS. DANG, WAS SHE DISCIPLINED AS A RESULT OF THIS  
20 INCIDENT?

21 A. YES, SHE WAS.

22 Q. AND WHAT EXACTLY WAS THAT FORM OF DISCIPLINE?

23 A. SHE WAS SUSPENDED.

24 MS. MURAKAMI: CINDY, COULD YOU PLEASE PUT UP  
25 EXHIBIT 1001, ALREADY IN EVIDENCE, BAY 232.



1 Q. NOW, DO YOU RECOGNIZE THIS DOCUMENT?

2 A. YES.

3 Q. IS THIS THE COUNSELLING MEMO GIVEN TO MS. DANG REGARDING  
4 HER SUSPENSION?

5 A. YES, IT WAS.

6 Q. AND WHAT IS THE DATE ON THIS MEMO?

7 A. OCTOBER 8TH, 2009.

8 Q. AND WERE YOU PRESENT WHEN THIS DOCUMENT WAS SIGNED?

9 A. YES, I WAS.

10 Q. AND ARE THOSE YOUR INITIALS ON THAT PAGE?

11 A. YES.

12 Q. IN THE BOTTOM RIGHT-HAND CORNER?

13 A. YES.

14 Q. OKAY. AND WHY ARE YOUR INITIALS ON THIS DOCUMENT?

15 A. ALL COUNSELLING MEMOS ARE ENTERED INTO OUR H.R. PROGRAM BY  
16 MY H.R. CLERK, SO THE INITIALS ABOVE MINE ARE MY CLERK'S, AND  
17 AFTER SHE ENTERED THEM, SHE PUTS IT IN MY BOX. I OPEN THE  
18 PROGRAM AND VERIFY THAT IT HAS BEEN ENTERED AND I INITIAL IT.

19 Q. AND WHO WAS INVOLVED IN THE DECISION TO SUSPEND MS. DANG  
20 FOR THIS INCIDENT?

21 A. MR. ORTEGA AND I WERE.

22 Q. AND WAS MR. WERNER INVOLVED AT ALL?

23 A. NO.

24 Q. AND WOULD YOU PLEASE REPEAT FOR THE JURY WHAT INFORMATION  
25 YOU REVIEWED IN DECIDING TO SUSPEND MS. DANG?

1 A. I REVIEWED SURVEILLANCE VIDEO OF THE INCIDENT AND I  
2 REVIEWED STATEMENTS BY ARLENE FONTILLAS AND LINDA ELIAS.

3 Q. COULD YOU PLEASE GO TO 1017.

4 A. OKAY.

5 Q. SO IS THAT A CD?

6 A. YES, IT IS.

7 Q. SO THAT'S A CD THAT HAS BEEN MARKED AS JOINT EXHIBIT 1017,  
8 AND I'LL REPRESENT TO YOU THAT THIS IS THE SURVEILLANCE TAPE OF  
9 THAT NIGHT, OCTOBER 4TH, 2009.

10 A. OKAY.

11 Q. HAVE YOU REVIEWED THIS TAPE BEFORE?

12 A. YES, I HAVE.

13 Q. AND HAVE YOU REVIEWED IT RECENTLY?

14 A. YES.

15 Q. AND WHAT IS SHOWN ON THAT VIDEOTAPE?

16 A. IT'S BASICALLY THE EVENTS THAT HAPPENED ON OCTOBER 4TH,  
17 2009.

18 Q. AND WHO KEEPS THE -- WHO MAINTAINS THAT VIDEOTAPE AT  
19 BAY 101?

20 A. THE SURVEILLANCE DEPARTMENT.

21 MS. MURAKAMI: YOUR HONOR, WE OFFER EXHIBIT 1017.

22 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

23 THE COURT: ALL RIGHT. IT MAY BE RECEIVED.

24 MS. MURAKAMI: THANK YOU.

25 (DEFENDANT'S EXHIBIT 1017 WAS RECEIVED IN EVIDENCE.)

1 BY MS. MURAKAMI:

2 Q. NOW, WERE THERE CERTAIN KEY POINTS IN THE VIDEO THAT YOU  
3 RELIED ON IN MAKING YOUR DECISION TO SUSPEND MS. DANG?

4 A. YES, THERE WERE.

5 Q. AND DID YOU IDENTIFY CERTAIN PORTIONS OF THE VIDEO FOR  
6 THIS TRIAL?

7 A. YES, I DID.

8 Q. AND COULD YOU PLEASE TURN TO TABS 552 TO 559? I THINK  
9 THAT'S IN YOUR BINDER.

10 A. YOU SAID 552 AND 559 OR THROUGH?

11 Q. THROUGH 559, PLEASE.

12 A. THE PAGES CAME OUT.

13 Q. OH, NO.

14 A. YEAH, THE WHOLE THING KIND OF EXPLODED.

15 OKAY. SO 552?

16 Q. YES, THROUGH 559.

17 A. OKAY. THEY ARE ALL DISKS.

18 Q. SO I'LL REPRESENT TO YOU THAT THESE ARE EIGHT PORTIONS OF  
19 THE SURVEILLANCE VIDEO THAT YOU IDENTIFIED.

20 AND HAVE YOU REVIEWED THESE EXCERPTS RECENTLY?

21 A. YES, I HAVE.

22 MS. MURAKAMI: YOUR HONOR, WE OFFER EXHIBITS 552  
23 THROUGH 559.

24 MS. NGUYEN: YOUR HONOR, JUST FOR THE RECORD, WE  
25 OBJECT TO THEM WITH RESPECT TO THE COMPLETENESS BECAUSE THEY'RE

1 JUST CLIPS. BUT I KNOW THAT WE TALKED ABOUT THAT SO I KNOW  
2 THAT IT'S GOING TO GO IN.

3 THE COURT: I DON'T THINK THAT'S WHAT I SAID BEFORE,  
4 BUT I THINK I INDICATED THAT IF THE EXCERPTS WERE BASICALLY  
5 COMPLETE FOR WHAT THEY WANTED TO SHOW, THEY COULD COME IN AND  
6 YOU COULD PROVIDE ADDITIONAL PORTIONS IF YOU WANTED.

7 IF I THOUGHT THE EXCERPT WAS MISLEADING THE WAY IT WAS  
8 TAKEN OUT, I WOULD NOT PERMIT IT WITHOUT AN ADDITIONAL PORTION  
9 BEING PLAYED.

10 I THINK THAT'S WHAT I INDICATED.

11 MS. NGUYEN: THANK YOU, YOUR HONOR.

12 MR. MCMANIS: SO THEY'RE IN?

13 THE COURT: YES.

14 MR. MCMANIS: THANK YOU.

15 (DEFENDANT'S EXHIBITS 552 - 559 WERE RECEIVED IN  
16 EVIDENCE.)

17 THE COURT: WELL, BASED ON THE FACT I HAVEN'T HEARD  
18 AN OBJECTION THE EXCERPT IS MISLEADING.

19 MS. NGUYEN: OUR OBJECTION WAS JUST ON THE  
20 COMPLETENESS.

21 THE COURT: OKAY.

22 MS. MURAKAMI: YOUR HONOR, MAY THE WITNESS APPROACH  
23 THE SCREEN?

24 THE COURT: SURE.

25 MS. MURAKAMI: AND MAY SHE USE THE LASER POINTER?

1 THE COURT: YES.

2 MS. MURAKAMI: THANK YOU.

3 Q. MS. GILBERT, WE'LL START HERE WITH 552, WHICH IS THE FIRST  
4 CLIP THAT YOU IDENTIFIED. THIS CLIP IS TIME STAMPED 23:48  
5 MINUTES 57 SECONDS THROUGH 23:49 MINUTES AND 30 SECONDS.

6 IN OTHER WORDS, THIS IS AROUND 11:45 P.M. TO 11:49 P.M.

7 DO YOU SEE THE DATE AT THE BOTTOM OF THE SCREEN?

8 A. YES, I DO.

9 Q. AND DOES THIS APPEAR TO BE THE CLIP THAT YOU REVIEWED --

10 A. YES.

11 Q. -- PREVIOUSLY?

12 MS. MURAKAMI: CINDY, COULD YOU PLEASE PLAY A COUPLE  
13 OF SECONDS.

14 Q. MS. GILBERT, COULD YOU PLEASE SET THE SCENE UP FOR US, FOR  
15 THE JURY?

16 A. OKAY. SO FOR FRAME OF REFERENCE, THE TABLE IN QUESTION IS  
17 THE ONE WITH THE GENTLEMAN IN PURPLE RIGHT HERE, THIS IS THE  
18 DEALER, AND THIS IS THE CUSTOMER INVOLVED AND HE'S SEATED IN  
19 SEAT ONE, THIS IS MS. DANG, AND THIS IS ARLENE FONTILLAS  
20 DRESSED IN RED AT THE ADJACENT TABLE (INDICATING).

21 Q. THANK YOU. LET'S PLAY IT.

22 (VIDEO PLAYING.)

23 BY MS. MURAKAMI:

24 Q. SO WHAT DID YOU OBSERVE THERE?

25 A. MS. DANG APPEARS TO BE TAKING THE CUSTOMER'S ORDER.

1 MS. MURAKAMI: CONTINUE.

2 (VIDEO PLAYING.)

3 MS. MURAKAMI: LET'S PAUSE THERE.

4 Q. WHAT DID YOU OBSERVE THERE?

5 A. THIS IS MS. ELIAS AND SHE'S WALKING ON THE FLOOR. AND YOU  
6 CAN TELL THE DIFFERENCE BETWEEN THE TWO OF THEM, MS. ELIAS IS  
7 WEARING HER APRON HARNESS AND MS. DANG IS NOT IF THAT MAKES IT  
8 EASIER (INDICATING).

9 Q. THANK YOU.

10 CONTINUE.

11 (VIDEO PLAYING.)

12 MS. MURAKAMI: THANKS, CINDY.

13 LET'S MOVE ON TO 553, AND THIS IS 23:55 MINUTES AND  
14 55 SECONDS THROUGH 23:55 MINUTES AND 50 SECONDS FOR ROUGHLY  
15 11:55 P.M. TO 11:57 P.M.

16 CINDY, LET'S GO AHEAD AND PLAY THAT.

17 (VIDEO PLAYING.)

18 MS. MURAKAMI: LET'S PAUSE IT FOR A SECOND.

19 Q. WHAT DID YOU OBSERVE THERE?

20 A. MS. DANG HAS BROUGHT THE CUSTOMER'S ORDER OUT TO HIM.

21 Q. THANK YOU.

22 LET'S CONTINUE.

23 (VIDEO PLAYING.)

24 BY MS. MURAKAMI:

25 Q. AND WHAT DID YOU OBSERVE THERE?

1 A. THE CUSTOMER PAID MS. DANG FOR THE DRINK SHE BROUGHT HIM.

2 Q. THANK YOU.

3 LET'S CONTINUE.

4 (VIDEO PLAYED.)

5 MS. MURAKAMI: THANK YOU. LET'S GO TO CLIP 3, WHICH  
6 IS 554. THIS CLIP IS TIME STAMPED 0 HOURS, 6 MINUTES AND 20  
7 SECONDS TO 0 HOURS, 6 MINUTES AND 25 SECONDS OR 12:06 A.M.  
8 ROUGHLY.

9 GO AHEAD AND PLAY IT.

10 (VIDEO PLAYED.)

11 MS. MURAKAMI: PAUSE.

12 Q. SO WHAT DID YOU JUST OBSERVE THERE?

13 A. THE CUSTOMER CALLED MS. ELIAS OVER.

14 Q. THANK YOU.

15 CONTINUE.

16 (VIDEO PLAYED.)

17 MS. MURAKAMI: LET'S JUST PLAY THAT ONE MORE TIME.

18 (VIDEO PLAYED.)

19 MS. MURAKAMI: LET'S MOVE ON TO 555, WHICH IS THE  
20 FOURTH CLIP YOU IDENTIFIED. THIS CLIP IS TIME STAMPED 0 HOURS,  
21 9 MINUTES AND 40 SECONDS TO 0 HOURS, 10 MINUTES AND 50 SECONDS  
22 OR ABOUT 12:09 TO 12:10 A.M.

23 LET'S GO AHEAD AND PLAY IT.

24 (VIDEO PLAYING.)

25 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

1 Q. SO WHAT DID YOU OBSERVE THERE?

2 A. MS. ELIAS IS BRINGING THE CUSTOMER A DRINK.

3 MS. MURAKAMI: CONTINUE.

4 (VIDEO PLAYING.)

5 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

6 Q. WHAT DID YOU OBSERVE THERE?

7 A. THE CUSTOMER APPEARED TO BE WAVING AWAY THE FIRST DRINK.

8 MS. MURAKAMI: OKAY. LET'S CONTINUE.

9 (VIDEO PLAYING.)

10 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

11 Q. WHAT DID YOU OBSERVE THERE?

12 A. THE CUSTOMER IS PAYING MS. ELIAS.

13 Q. OKAY. LET'S CONTINUE.

14 (VIDEO PLAYING.)

15 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

16 Q. WHAT DID YOU OBSERVE THERE?

17 A. MS. ELIAS GAVE THE CUSTOMER HIS CHANGE AND REMOVED THE  
18 FIRST DRINK.

19 Q. OKAY. LET'S JUST PLAY IT ONE MORE TIME WITHOUT  
20 INTERRUPTIONS. THANK YOU.

21 (VIDEO PLAYING.)

22 MS. MURAKAMI: ALL RIGHT. LET'S MOVE ON TO  
23 EXHIBIT 556, WHICH IS THE FIFTH CLIP THAT YOU IDENTIFIED, AND  
24 THIS IS TIME STAMPED 0 HOURS, 16 MINUTES AND 10 SECONDS TO  
25 0 HOURS, 16 MINUTES AND 35 SECONDS, OR ROUGHLY 12:16 A.M.



1 LET'S GO AHEAD AND PLAY IT.

2 (VIDEO PLAYING.)

3 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

4 Q. WHAT DID YOU OBSERVE THERE?

5 A. MS. ELIAS BROUGHT THE CUSTOMER THE AMOUNT HE PAID FOR THE  
6 FIRST DRINK.

7 Q. OKAY.

8 JUST FINISH UP THE CLIP.

9 (VIDEO PLAYING.)

10 MS. MURAKAMI: LET'S MOVE ON TO EXHIBIT 557, WHICH  
11 IS THE FIFTH CLIP YOU SELECTED, AND THIS CLIP IS TIMED 0 HOURS,  
12 20 MINUTES AND 30 SECONDS TO 0 HOURS, 22 MINUTES AND 15 SECONDS  
13 OR ROUGHLY 12:20 TO 12:22 A.M., SO ABOUT FOUR MINUTES AFTER THE  
14 LAST ONE.

15 GO AHEAD AND PLAY IT.

16 (VIDEO PLAYING.)

17 MS. MURAKAMI: PAUSE FOR A SECOND.

18 Q. WHAT DID YOU OBSERVE THERE?

19 A. MS. DANG APPROACHING THE CUSTOMER.

20 Q. OKAY.

21 CONTINUE.

22 (VIDEO PLAYING.)

23 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

24 Q. WHAT ARE YOU OBSERVING HERE?

25 A. MS. DANG TOOK THE NOTE PAD THAT SHE USES TO TAKE ORDERS

1 OUT OF HER APRON AND APPEARS TO BE SHOWING IT TO THE CUSTOMER.

2 Q. CONTINUE.

3 (VIDEO PLAYING.)

4 MS. MURAKAMI: LET'S PAUSE THERE.

5 Q. WHAT DID YOU OBSERVE THERE?

6 A. IT LOOKS LIKE THE CUSTOMER PUSHED THE SERVING TABLE AWAY  
7 FROM HIM.

8 Q. OKAY.

9 LET'S CONTINUE.

10 (VIDEO PLAYING.)

11 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

12 Q. AND WHAT DID YOU OBSERVE THERE?

13 A. MS. DANG APPEARS TO BE STILL POINTING AT HER NOTE PAD AND  
14 TALKING TO THE CUSTOMER.

15 Q. OKAY.

16 LET'S CONTINUE.

17 (VIDEO PLAYING.)

18 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

19 Q. WHAT DID YOU OBSERVE THERE?

20 A. MS. ELIAS.

21 Q. THANK YOU.

22 CONTINUE.

23 (VIDEO PLAYING.)

24 MS. MURAKAMI: OKAY. LET'S PAUSE THERE FOR A  
25 SECOND.

1 Q. WHAT DID YOU OBSERVE THERE?

2 A. MS. ELIAS APPEARS TO BE TRYING TO CALM THE SITUATION AND  
3 MOVE MS. DANG AWAY FROM THE TABLE.

4 Q. OKAY. CONTINUE.

5 (VIDEO PLAYING.)

6 MS. MURAKAMI: LET'S PAUSE THERE.

7 Q. AND WHAT DID YOU OBSERVE THERE?

8 A. IT LOOKS LIKE SHE'S APOLOGIZING TO THE CUSTOMER.

9 Q. OKAY.

10 CONTINUE.

11 (VIDEO PLAYING.)

12 MS. MURAKAMI: SO BEAR WITH ME HERE, BUT I THINK  
13 WE'RE GOING TO PLAY IT ONE MORE TIME WITHOUT ANY INTERRUPTION.  
14 THIS IS THE SAME CLIP, EXHIBIT 557.

15 (VIDEO PLAYED.)

16 MS. MURAKAMI: LET'S MOVE ON TO EXHIBIT 558, WHICH  
17 IS THE SEVENTH CLIP YOU IDENTIFIED. THIS CLIP IS TIME STAMPED  
18 0 HOURS, 30 MINUTES AND 15 SECONDS TO 0 HOURS, 33 MINUTES AND  
19 25 SECONDS, OR ABOUT 12:33 A.M.

20 LET'S GO AHEAD.

21 (VIDEO PLAYING.)

22 BY MS. MURAKAMI:

23 Q. AND WHAT DID YOU OBSERVE THERE?

24 A. IT APPEARS THAT MS. ELIAS TOOK ANOTHER DRINK ORDER FROM  
25 THE CUSTOMER.

1 Q. OKAY.

2 GO AHEAD.

3 (VIDEO PLAYED.)

4 MS. MURAKAMI: LET'S MOVE ON TO EXHIBIT 559, WHICH  
5 IS THE FINAL CLIP, THE EIGHTH CLIP, AND THIS CLIP IS TIME  
6 STAMPED 0 HOURS, 37 MINUTES AND 10 SECONDS TO 0 HOURS,  
7 38 MINUTES AND 55 SECONDS, OR ABOUT 12:37 TO 12:38 A.M., ABOUT  
8 FOUR MINUTES AFTER THE LAST CLIP.

9 GO AHEAD AND PLAY IT.

10 (VIDEO PLAYING.)

11 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

12 Q. AND WHAT DID YOU OBSERVE THERE?

13 A. THIS IS MS. DANG APPROACHING THE CUSTOMER AGAIN.

14 Q. OKAY.

15 CONTINUE.

16 (VIDEO PLAYED.)

17 MS. MURAKAMI: LET'S PAUSE.

18 Q. WHAT DID YOU OBSERVE THERE?

19 A. MS. ELIAS HAS NOW ENTERED AND MS. DANG APPEARS TO BE  
20 ARGUING WITH THE CUSTOMER.

21 Q. LET'S CONTINUE.

22 (VIDEO PLAYING.)

23 MS. MURAKAMI: LET'S PAUSE FOR A SECOND.

24 Q. AND WHAT DID YOU OBSERVE THERE?

25 A. MS. FONTILLAS HAS HEARD THE RAISED VOICES AND SHE HAS

1 GOTTEN UP FROM HER TABLE AND HAS TURNED AROUND.

2 Q. AND CONTINUE.

3 (VIDEO PLAYING.)

4 MS. MURAKAMI: LET'S PAUSE THERE.

5 Q. AND WHAT DID YOU OBSERVE THERE?

6 A. MS. ELIAS CAME BACK TO COLLECT MONEY FOR THE PREVIOUS  
7 ORDER THAT SHE HAD, AND THEN SHE AND MS. FONTILLAS APPEARED TO  
8 HAVE A CONVERSATION.

9 Q. THANK YOU. AND WE'LL PLAY IT ONE MORE TIME AFTER WITHOUT  
10 INTERRUPTION.

11 (VIDEO PLAYING.)

12 MS. MURAKAMI: ALL RIGHT. THANK YOU. YOU CAN TAKE  
13 THE WITNESS STAND AGAIN.

14 Q. NOW, WAS THERE ANY AUDIO WITH THIS SURVEILLANCE TAPE?

15 A. NO, THERE WAS NOT.

16 Q. AND SO HOW DID YOU KNOW WHAT WAS KIND OF GOING ON IN THE  
17 SCENES WITHOUT HEARING THE CONVERSATIONS BETWEEN THE PEOPLE IN  
18 THE VIDEO?

19 A. I ALSO HAD STATEMENTS FROM MS. ELIAS AND MS. FONTILLAS.

20 Q. AND WERE THOSE CONSISTENT WITH WHAT YOU SAW ON THIS  
21 SCREEN?

22 A. YES, THEY WERE.

23 Q. THANK YOU. AND DID YOU RELY ON ALL OF THESE CLIPS IN  
24 DECIDING TO SUSPEND MS. DANG?

25 A. YES, WE DID.

1 Q. NOW, IS IT THE POLICY AT BAY 101 TO DISCIPLINE EMPLOYEES  
2 WHO ARGUE WITH CUSTOMERS ON THE CASINO FLOOR?

3 A. YES, IT IS.

4 Q. I'D LIKE YOU TO TURN TO EXHIBIT 523 ALREADY IN EVIDENCE.

5 A. OKAY.

6 Q. AND WHAT DO YOU HAVE BEFORE YOU?

7 A. IT IS THE EMPLOYEE HANDBOOK FROM AUGUST 2008.

8 Q. AND WHICH PROVISIONS OF THAT HANDBOOK DID YOU RELY UPON IN  
9 DECIDING TO SUSPEND MS. DANG?

10 A. OKAY. IT'S UNDER THE DISCIPLINARY POLICY. SORRY.

11 Q. IT'S OKAY.

12 A. OKAY. IT STARTS ON PAGE 42, WHICH IS THE BAY 001962.

13 OH, DO YOU WANT ME TO GO AHEAD AND READ THE PROVISIONS?

14 Q. I'LL HAVE CINDY PUT IT UP ON THE SCREEN.

15 CINDY, COULD YOU PUT UP BAY 01962?

16 A. THAT'S WHERE THE POLICY STARTS, AND IF SHE GOES ON TO THE  
17 NEXT PAGE.

18 Q. UH-HUH.

19 A. IT'S UNDER MAJOR RULES, 2, NUMBER 8, HARASSING,  
20 THREATENING, INTIMIDATING, OR COERCING ANOTHER EMPLOYEE OR  
21 CUSTOMER WHETHER ON OR OFF DUTY.

22 Q. OKAY.

23 A. AND ALSO ON THE FOLLOWING PAGE, PAGE 44, NUMBER 10, VERBAL  
24 ARGUMENT ON BAY 101 PROPERTY IN VIEW OF CUSTOMERS.

25 Q. THANK YOU.

1           AND DID YOU MEET WITH MS. DANG TO INFORM HER OF HER  
2           SUSPENSION?

3           A.   MR. ORTEGA AND I DID, YES.

4           Q.   AND WHEN DID THIS MEETING OCCUR?

5           A.   IT OCCURRED ON THE 8TH OF OCTOBER 2009.

6           Q.   AND WHAT HAPPENED DURING THIS MEETING?

7           A.   MR. ORTEGA AND I EXPLAINED TO MS. DANG THAT, YOU KNOW, WE  
8           HAD WATCHED THE SURVEILLANCE INCIDENT -- OR EXCUSE ME -- THE  
9           SURVEILLANCE FOOTAGE OF THE INCIDENT THAT TOOK PLACE ON THE  
10          SUNDAY BEFORE AND WE HAD REVIEWED STATEMENTS FROM TWO OF HER  
11          COWORKERS AND WE HAD DETERMINED THAT SHE HAD BEEN ARGUING WITH  
12          A CUSTOMER ON THE CASINO FLOOR AND WITH A COWORKER IN VIEW OF  
13          CUSTOMERS.

14          Q.   AND WHAT DID MS. DANG SAY?

15          A.   SHE TOOK OUT HER NOTE PAD OUT OF AN APRON AND TURNED TO A  
16          PAGE AND POINTED AT IT AND SAID "I DIDN'T TAKE THE WRONG  
17          ORDER."

18          MR. ORTEGA AND I TRIED TO GET HER TO UNDERSTAND THAT SHE  
19          WAS BEING SUSPENDED NOT FOR TAKING A WRONG ORDER, BUT FOR  
20          ARGUING WITH THE CUSTOMER.

21          Q.   AND DID YOU TELL HER TO SHUT UP AT ANY TIME?

22          A.   NO, I DID NOT.

23          Q.   AND DID YOU TELL HER TO BE QUIET AT ANY TIME DURING THIS  
24          MEETING?

25          A.   NO, I DID NOT.

1 Q. DID YOU RAISE YOUR VOICE AT MS. DANG DURING THIS MEETING?

2 A. NO.

3 Q. AND DID YOU TELL HER "I'M DONE WITH YOU"?

4 A. NO, I DID NOT.

5 MS. MURAKAMI: AND CINDY, COULD YOU PLEASE SHOW

6 EXHIBIT 1001, BAY 1332, ALREADY IN EVIDENCE. COULD YOU MAKE IT

7 A LITTLE BIGGER? THANK YOU.

8 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

9 A. YES, I DO.

10 Q. AND WE JUST LOOKED AT IT. DO YOU SEE THAT PORTION WHERE

11 IT SAYS BELOW "EMPLOYEE COMMENTS"?

12 A. YES.

13 Q. AND DID MS. DANG HAVE THE OPTION OF WRITING COMMENTS IF

14 SHE WANTED TO?

15 A. YES, SHE DID, AND I GAVE HER THE ADDITIONAL OPTION OF

16 BRINGING COMMENTS IN AT A LATER DATE AND I WOULD ATTACH THEM TO

17 THE MEMO.

18 Q. IS THAT YOUR USUAL PRACTICE?

19 A. YES, IT IS.

20 Q. DID YOU DISCUSS ANY PERFORMANCE RELATED ISSUES WITH

21 MS. DANG DURING THIS MEETING?

22 A. YES, WE DID.

23 Q. AND WHAT PERFORMANCE ISSUES WERE THOSE?

24 A. SHE WAS HAVING PROBLEMS BALANCING HER ENVELOPE. ALL GROUP

25 SERVERS HAVE AN ENVELOPE THAT THEY HAVE TO TURN IN TO THE CAGE



1 AT THE END OF THE DAY AND IT NEEDS TO BE BALANCED.

2 Q. AND HOW DID YOU KNOW THAT SHE HAD THESE PROBLEMS BALANCING  
3 HER ENVELOPES?

4 A. THE COMPLIANCE ANALYST HAD SENT MEMOS DOWN TO MR. ORTEGA.

5 MS. MURAKAMI: OKAY. CINDY, COULD YOU PLEASE PUT UP  
6 EXHIBIT 1001, BAY 1331.

7 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

8 A. YES.

9 Q. AND WHAT IS THIS DOCUMENT?

10 A. IT'S THE SECOND COUNSELLING MEMO THAT WAS GIVEN TO  
11 MS. DANG THAT DAY ON OCTOBER 8TH.

12 Q. AND DID YOU READ THIS MEMO TO MS. DANG?

13 A. YES.

14 Q. AND HOW DID SHE RESPOND?

15 A. SHE DIDN'T HAVE A RESPONSE. SHE SIGNED IT AND LEFT.

16 Q. AND DID YOU PREVENT HER FROM WRITING ANY COMMENTS ON THIS  
17 MEMO?

18 A. NO, I DID NOT.

19 MS. MURAKAMI: THANKS, CINDY. YOU CAN TAKE IT DOWN.  
20 OKAY.

21 Q. NOW, DID MS. DANG MAKE ANY COMPLAINTS ABOUT MR. ORTEGA AT  
22 THIS MEETING?

23 A. NO, SHE DID NOT.

24 Q. DID SHE MAKE ANY COMPLAINTS ABOUT MR. SUAREZ AT THIS  
25 MEETING?

1 A. NO, SHE DID NOT.

2 Q. DID MS. DANG MAKE ANY COMPLAINTS ABOUT DISCRIMINATION OR  
3 HARASSMENT AT THIS MEETING?

4 A. NO, SHE DID NOT.

5 Q. DID MS. DANG MAKE ANY COMPLAINTS ABOUT MEAL AND REST  
6 BREAKS AT THIS MEETING?

7 A. NO.

8 Q. AND YOU'RE -- ARE YOU FAMILIAR WITH MS. DANG'S APRIL 20TH,  
9 2007, LETTER?

10 A. YES.

11 Q. AND BETWEEN THE DATE OF THAT LETTER, APRIL 20TH, 2007, AND  
12 THE DATE OF THIS MEETING, OCTOBER 8TH, 2009, DID MS. DANG MAKE  
13 ANY COMPLAINTS ABOUT MR. SUAREZ TO THE H.R. DEPARTMENT?

14 A. NO, SHE DID NOT.

15 Q. AND BETWEEN THE TIME THAT MS. DANG BECAME A FOOD SERVER  
16 AND THE DAY OF THIS MEETING BEING OCTOBER 8TH, 2009, DID  
17 MS. DANG, WAS SHE EVER CALLED IN TO H.R. TO DISCUSS ANYTHING?

18 A. I DON'T BELIEVE SO, NO.

19 Q. NOW, DID MS. DANG EVER MAKE A COMPLAINT ABOUT YOU TO  
20 BAY 101?

21 A. YES, SHE DID.

22 Q. AND WHAT WAS THE NATURE OF THIS COMPLAINT?

23 A. I DON'T KNOW THE EXACT NATURE. I WAS JUST TOLD THAT A  
24 COMPLAINT WAS MADE.

25 Q. AND WERE YOU TOLD WHO MADE THE COMPLAINT?

1 A. YES. MR. WERNER INFORMED MR. ORTEGA AND MYSELF THAT  
2 MS. DANG HAD MADE A COMPLAINT ABOUT BOTH OF US.

3 Q. AND DO YOU KNOW WHAT FORM THIS COMPLAINT CAME IN?

4 A. I BELIEVE HE SAID HE RECEIVED A LETTER.

5 Q. AND HAVE YOU EVER SEEN THIS LETTER?

6 A. NO, I HAVE NOT.

7 Q. DID MR. ORTEGA TELL YOU ANY DETAILS OF THE LETTER?

8 A. NO. HE JUST TOLD US THAT A COMPLAINT HAD BEEN MADE AND WE  
9 WERE NOT TO RETALIATE AGAINST MS. DANG, AND HE WAS HIRING AN  
10 INVESTIGATOR TO LOOK INTO THE ALLEGATIONS.

11 Q. AND WAS AN INVESTIGATOR HIRED TO LOOK INTO THE  
12 ALLEGATIONS?

13 A. YES.

14 Q. WERE YOU INVOLVED IN HIRING THE INVESTIGATOR?

15 A. NO, I WAS NOT.

16 Q. DO YOU REMEMBER THE INVESTIGATOR'S NAME?

17 A. I BELIEVE IT WAS CAROLE EDMAN.

18 Q. AND WHAT WAS THE PURPOSE OF MS. EDMAN'S INVESTIGATION?

19 A. SHE WAS TO LOOK INTO MS. DANG'S ALLEGATIONS.

20 Q. AND APPROXIMATELY WHEN DID THIS INVESTIGATION TAKE PLACE?

21 A. I BELIEVE NOVEMBER 2009.

22 Q. AND WERE YOU ASKED TO ASSIST IN ANY PART OF THE  
23 INVESTIGATION?

24 A. I WAS ASKED TO COOPERATE WITH THE INVESTIGATOR. I PULLED  
25 FILES THAT SHE REQUESTED. I SET APPOINTMENTS WITH EMPLOYEES

1 THAT SHE WANTED TO SEE.

2 Q. AND DID YOU REVIEW ANY OF THESE DOCUMENTS WITH MS. EDMAN?

3 A. NO, I DID NOT.

4 Q. DID YOU DISCUSS ANY OF THE DOCUMENTS WITH MS. EDMAN?

5 A. NO, I DID NOT.

6 Q. WHEN YOU CONTACTED EMPLOYEES TO MEET WITH MS. EDMAN, WHAT  
7 DID YOU SAY TO THEM?

8 A. SHE HAD GIVEN ME A SCRIPT THAT I WAS BASICALLY TO TELL  
9 THEM THAT A COMPLAINT HAD BEEN FILED BY A COWORKER AND THEIR  
10 NAME HAD BEEN MENTIONED AND THEY WERE NOT IN TROUBLE AND I GAVE  
11 THEM THE DATE AND TIME OF THE MEETING.

12 Q. DID YOU TELL ANY OF THESE EMPLOYEES WHAT TO SAY TO  
13 MS. EDMAN?

14 A. NO, I DID NOT.

15 Q. OKAY. AND HAVE YOU EVER SEEN MS. EDMAN'S INVESTIGATION  
16 REPORT?

17 A. NO, I HAVE NOT.

18 Q. WERE YOU EVER TOLD ANY OF THE RESULTS OF THE REPORT?

19 A. MR. WERNER MET WITH MR. SHAW, MR. ORTEGA, AND MYSELF, I  
20 BELIEVE EARLY DECEMBER OR MID-DECEMBER, AND DISCUSSED SOME OF  
21 THE FINDINGS WITH US.

22 Q. AND WHO IS MR. SHAW AGAIN?

23 A. MR. SHAW IS THE DIRECTOR OF OPERATIONS, OR HE WAS AT THE  
24 TIME.

25 Q. OKAY. AND WAS HE MR. ORTEGA'S SUPERVISOR?

1 A. HE WAS HIS DIRECT REPORT, YES.

2 Q. OKAY. AND WHAT HAPPENED DURING THIS MEETING?

3 A. MR. WERNER TOLD US THAT HE WANTED US TO SET UP A MEETING  
4 WITH MS. DANG. HE GAVE US AN OUTLINE OF WHAT WAS TO BE  
5 DISCUSSED, WHICH WERE BASICALLY THE FINDINGS OF THE  
6 INVESTIGATOR, THAT SHE FOUND MOST ALLEGATIONS WERE UNFOUNDED,  
7 AND THEN WE WERE SUPPOSED TO MOVE ON TO HER OUTSTANDING  
8 PERFORMANCE ISSUES.

9 Q. AND DID MR. WERNER TELL YOU HOW TO PROCEED OR DID HE GIVE  
10 YOU ANY INSTRUCTIONS WITH REGARD TO MR. ORTEGA?

11 A. YES. I WAS TO SET UP SUPERVISORY TRAINING WITH MR. ORTEGA  
12 AND MR. ORTEGA WAS TOLD TO BASICALLY STOP BANTERING WITH  
13 MAMA ANH IN THE KITCHEN.

14 Q. OKAY. AND DID MR. WERNER TELL YOU HOW TO PROCEED WITH  
15 MS. DANG?

16 A. YES. ALL THREE OF US WERE TO SET UP A MEETING TO MEET  
17 WITH MS. DANG.

18 Q. DO YOU KNOW WHY MR. WERNER WANTED MR. SHAW TO ATTEND THE  
19 MEETING WITH MS. DANG?

20 A. I BELIEVE IT WAS BECAUSE MS. DANG COMPLAINED ABOUT MEETING  
21 WITH ME AND MR. ORTEGA AND SO HE WANTED SOMEBODY ELSE PRESENT.

22 MS. MURAKAMI: CINDY, COULD YOU PLEASE SHOW  
23 EXHIBIT 1014, BAY 51 ALREADY IN EVIDENCE.

24 Q. DO YOU RECOGNIZE THIS DOCUMENT?

25 A. YES. IT'S THE OUTLINE THAT MR. WERNER BROUGHT TO THAT

1 MEETING.

2 Q. COULD WE GO TO 1751, PLEASE.

3 AND DO YOU RECOGNIZE THIS DOCUMENT?

4 A. YES. IT'S THE COUNSELLING MEMO THAT I USED TO DETAIL THE  
5 AREAS OF PERFORMANCE THAT NEEDED TO BE IMPROVED BY MS. DANG.

6 Q. AND NOW, WAS THIS COUNSELLING MEMO MEANT TO BE  
7 DISCIPLINARY?

8 A. NO, IT WAS NOT.

9 Q. AND SO WHY IS THE WARNING BOX CHECKED OFF?

10 A. THAT WAS AN ERROR ON MY PART. I -- THESE ARE STORED IN MY  
11 COMPUTER. I NO LONGER HAVE A BLANK ONE, SO I TYPICALLY PULL UP  
12 AN OLD ONE AND SAVE IT UNDER A NEW NAME AND RETYPE IT AND I  
13 NEGLECTED TO UNCHECK THAT BOX.

14 Q. NOW, WAS MR. ORTEGA SUPPOSED TO NOTIFY MS. DANG OF THE  
15 MEETING?

16 A. YES, YES, HE WAS.

17 Q. AND DO YOU KNOW HOW FAR IN ADVANCE HE WAS SUPPOSED TO GIVE  
18 HER NOTICE OF THE MEETING?

19 A. I BELIEVE HE WAS SUPPOSED TO COME TO WORK A LITTLE EARLIER  
20 THAN NORMAL THAT MORNING TO TELL MS. DANG THAT SHE NEEDED TO  
21 REPORT AT THE END OF HER SHIFT, 7:00 A.M.

22 Q. AND HOW LONG WAS THIS MEETING SUPPOSED TO LAST?

23 A. IT WAS SUPPOSED TO BE SHORT, ABOUT TEN MINUTES.

24 Q. AND WOULD THIS MEETING, THE TIME SPENT ON THIS MEETING  
25 HAVE COUNTED TOWARDS MS. DANG'S WORK HOURS THAT DAY?

1 A. YES.

2 Q. WOULD MS. DANG HAVE BEEN ELIGIBLE FOR OVERTIME PAY IF THE  
3 MEETING CAUSED HER TO WORK MORE THAN EIGHT HOURS THAT DAY?

4 A. YES.

5 Q. DID YOU FEEL AN INTERPRETER WOULD BE NECESSARY FOR THIS  
6 MEETING?

7 A. NO.

8 Q. DID YOU HAVE ANY PROBLEMS UNDERSTANDING MS. DANG IN THE  
9 PAST?

10 A. NO.

11 Q. SO DID YOU GO TO WORK ON DECEMBER 21ST, 2009?

12 A. YES.

13 Q. AND IS THAT THE DAY OF THE MEETING WITH MS. DANG,  
14 MR. ORTEGA, AND MR. SHAW?

15 A. YES.

16 Q. AND DID THIS PLANNED MEETING TAKE PLACE?

17 A. NO, IT DID NOT.

18 Q. AND HOW WERE YOU INFORMED THAT THE MEETING WOULD TAKE  
19 PLACE?

20 A. WHEN I ARRIVED AT WORK THAT MORNING, I CALLED MR. ORTEGA  
21 AND HE INFORMED ME THAT MS. DANG WOULD NOT BE ATTENDING THE  
22 MEETING.

23 HE SAID THAT HE HAD LEFT ME A VOICEMAIL ON MY CELL PHONE  
24 AND I HADN'T SEEN IT.

25 Q. OKAY. AND WAS MS. DANG TERMINATED ON THAT SAME DAY?

1 A. YES, SHE WAS.

2 Q. AND WHO MADE THE DECISION TO TERMINATE HER?

3 A. MR. WERNER DID.

4 Q. AND DID HE TELL YOU WHY MS. DANG WAS BEING TERMINATED?

5 A. HE SAID THAT HE FELT HER NOT ATTENDING THE MEETING WAS JOB  
6 ABANDONMENT.

7 Q. AND AS HEAD OF H.R., WERE YOU RESPONSIBLE FOR PROCESSING  
8 HER TERMINATION PAPERWORK?

9 A. YES, I WAS.

10 Q. WHAT STEPS DID YOU TAKE TO PROCESS HER TERMINATION?

11 A. I HAD THE PAYROLL CLERK CUT HER FINAL PAYCHECK; I FILLED  
12 OUT THE TERMINATION PACKET; I ENCLOSED HER FINAL PAYCHECK AND  
13 UNEMPLOYMENT PACKET AND A LETTER INDICATED HER STATUS AS  
14 TERMINATED WITH THAT DATE AND SIGNED THAT AND PUT ALL OF THAT  
15 IN A FEDEX ENVELOPE AND SENT IT OUT OVERNIGHT.

16 Q. OKAY. ALL RIGHT. HERE YOU GO.

17 WOULD YOU PLEASE TURN TO TAB 11.

18 A. ALL RIGHT.

19 MR. MCMANIS: I'M SORRY. WHAT WAS THAT?

20 MS. MURAKAMI: 11.

21 MR. MCMANIS: THANK YOU.

22 BY MS. MURAKAMI:

23 Q. DO YOU RECOGNIZE THAT DOCUMENT?

24 A. YES, I DO.

25 Q. AND WHAT IS IT?



1 A. IT IS THE STATUS CHANGE FORM FOR MS. DANG FOR  
2 DECEMBER 2009.

3 Q. AND DID YOU PREPARE THIS DOCUMENT?

4 A. YES, I DID.

5 Q. AND WAS THIS SENT TO MS. DANG?

6 A. NO.

7 Q. IS THIS FOR BAY 101'S RECORDS?

8 A. YES, THIS WAS FOR THE PERSONNEL FILE.

9 MS. MURAKAMI: OKAY. YOUR HONOR, I MOVE EXHIBIT 11  
10 INTO EVIDENCE.

11 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

12 THE COURT: 11 IS RECEIVED.

13 (DEFENDANT'S EXHIBIT 11 WAS RECEIVED IN EVIDENCE.)

14 MS. MURAKAMI: CAN WE JUST SHOW THAT QUICKLY FOR THE  
15 JURY?

16 Q. AND UNDER REMARKS THERE, WHAT IS WRITTEN?

17 A. JOB ABANDONMENT.

18 Q. AND IS THAT THE REASON THAT MR. WERNER TERMINATED  
19 MS. DANG?

20 A. YES.

21 Q. OKAY. SORRY. WE'RE GOING TO HAVE TO KEEP SWITCHING HERE.  
22 I'LL GET IT FOR YOU.

23 PLEASE TURN TO EXHIBIT 1001, BAY 1330.

24 A. OKAY.

25 Q. IT'S ALREADY IN EVIDENCE.

1 CINDY, COULD YOU PLEASE PUT THIS UP, AND BLOW UP THE  
2 REMARKS.

3 AND DO YOU RECOGNIZE THIS DOCUMENT?

4 A. YES.

5 Q. AND WHAT IS THIS DOCUMENT?

6 A. IT'S A COUNSELLING MEMO FOR MS. DANG INDICATING DISCHARGE,  
7 AND THE DATE IS DECEMBER 21ST, 2009.

8 Q. AND WHO PREPARED THIS DOCUMENT?

9 A. MR. ORTEGA, I BELIEVE, HAD HIS SECRETARY PREPARE IT.

10 Q. AND DO YOU KNOW WHY THIS SAYS INSUBORDINATION WHILE THE  
11 OTHER MEMO THAT WE JUST LOOKED AT SAYS JOB ABANDONMENT?

12 A. I ASKED MR. ORTEGA TO PREPARE THE FINAL COUNSELLING MEMO.  
13 I DID NOT TELL HIM TO PUT JOB ABANDONMENT. I DIDN'T MENTION  
14 THAT TO HIM. SO HE CHOSE TO PUT INSUBORDINATION.

15 Q. OKAY. WAS THERE ANY OTHER PAPERWORK THAT YOU PROCESSED  
16 FOR MS. DANG'S TERMINATION?

17 A. OTHER THAN THE TERM PACKET?

18 Q. YES.

19 A. NO.

20 Q. OKAY. LET ME JUST SHOW YOU ONE LAST EXHIBIT.

21 COULD YOU PLEASE TURN TO TAB 10.

22 A. OKAY.

23 Q. DO YOU RECOGNIZE THIS EXHIBIT?

24 A. YES. IT'S AN UNEMPLOYMENT INSURANCE SERVICES TERMINATION  
25 REPORT.

1 Q. AND IS THIS SENT TO ANYBODY?

2 A. YEAH. WE RETAIN EMPLOYERS GROUP TO HANDLE OUR  
3 UNEMPLOYMENT CLAIMS, SO ANY TIME THERE'S A TERMINATION, THIS  
4 FORM IS FILLED OUT AND FAXED TO THEM.

5 Q. SO THIS IS A STANDARD FORM THAT YOU ALWAYS FILL OUT WHEN  
6 SOMEONE IS TERMINATED?

7 A. IT'S PART OF THE TERM PACKET.

8 MS. MURAKAMI: YOUR HONOR, I OFFER EXHIBIT 10.

9 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

10 THE COURT: 10 IS RECEIVED.

11 MS. MURAKAMI: THANK YOU.

12 (DEFENDANT'S EXHIBIT 10 WAS RECEIVED IN EVIDENCE.)

13 BY MS. MURAKAMI:

14 Q. SO MOVING ON TO A NEW TOPIC.

15 WAS MS. DANG DISCIPLINED 2007 FOR AN ABSENTEEISM EVENT?

16 A. YES, SHE WAS.

17 Q. COULD YOU PLEASE TURN AGAIN TO 1001, BAY 1342 ALREADY IN  
18 EVIDENCE.

19 CINDY, COULD YOU PLEASE PUT UP BAY 1342?

20 A. OKAY. I HAVE IT.

21 Q. OKAY. AND DO YOU RECOGNIZE THIS DOCUMENT?

22 A. YES. IT'S A COUNSELLING MEMO FOR MS. DANG DATED  
23 JANUARY 6TH, 2007.

24 Q. AND ACCORDING TO THIS MEMO, WHY WAS MS. DANG GIVEN WHAT  
25 LOOKS LIKE A CORRECTION?

1 A. YES. SHE WAS LATE FOR WORK.

2 Q. AND WHO WOULD HAVE GIVEN MS. DANG THIS CORRECTION?

3 A. MR. ORTEGA.

4 Q. AND WHAT IS A CORRECTION?

5 A. IT'S A DOCUMENTED ORAL WARNING.

6 Q. AND DO YOU HAVE TO BE CONSULTED BEFORE A SUPERVISOR GIVES  
7 AN EMPLOYEE A VERBAL WARNING?

8 A. NO, I DO NOT.

9 Q. AND IS THIS ORAL WARNING CONSISTENT WITH BAY 101'S  
10 POLICIES REGARDING TARDINESS?

11 A. YES, IT IS.

12 Q. PLEASE FLIP TO BAY 1341 WITHIN EXHIBIT 1001.

13 A. OKAY.

14 Q. AND SO WE LOOKED AT THIS YESTERDAY WITH PLAINTIFF'S  
15 COUNSEL.

16 AND DO YOU RECOGNIZE THIS DOCUMENT?

17 A. YES. IT'S ANOTHER COUNSELLING MEMO FOR MS. DANG.

18 Q. AND WHAT KIND OF ACTION IS BEING TAKEN UNDER THIS MEMO?

19 A. SUSPENSION.

20 Q. AND WHAT IS THE REASON?

21 A. NO CALL, NO SHOW FOR THREE DAYS.

22 Q. OKAY. AND WITHOUT TELLING ME THE OUTCOME, DID MS. DANG  
23 GRIEVE THIS SUSPENSION?

24 A. YES, SHE DID.

25 Q. AND COULD YOU PLEASE FLIP TO BAY 1340.

1 A. OKAY.

2 MS. MURAKAMI: CINDY, COULD YOU PLEASE PUT UP 1340?

3 THANK YOU.

4 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

5 A. YES. IT'S ANOTHER COUNSELLING MEMO FOR MS. DANG.

6 Q. AND WHAT ACTION IS BEING TAKEN UNDER THIS MEMO?

7 A. IT'S A SUSPENSION FOR AN UNEXCUSED ABSENCE.

8 Q. AND ACCORDING TO THIS MEMO, WHAT ARE THE CIRCUMSTANCES OF  
9 THE UNEXCUSED ABSENCE?

10 A. IT SAYS ON FEBRUARY 11TH, 2007, CUC CALLED IN SICK TO  
11 SUPERVISOR JOSE SOLIS. HE ASKED HER TO BRING A DOCTOR'S NOTE.  
12 SHE SAID SHE WAS GOING TO DOCTOR ON MONDAY.

13 AND THEN IT SAYS, "I ASKED HER FOR DOCTOR'S NOTE ON  
14 WEDNESDAY, 2-14-07 AND SHE SAID SHE DIDN'T GO. SHE DID NOT  
15 HAVE A DOCTOR'S NOTE."

16 Q. AND WAS THIS SUSPENSION CONSISTENT WITH BAY 101'S  
17 POLICIES?

18 A. YES.

19 Q. OKAY. I WANT TO TALK ABOUT MR. ORTEGA QUICKLY.

20 HAS ANY EMPLOYEE EVER COMPLAINED TO YOU ABOUT BEING  
21 TREATED UNFAIRLY BY MR. ORTEGA BECAUSE HE OR SHE IS VIETNAMESE?

22 A. NO.

23 Q. AND HAS ANY EMPLOYEE EVER COMPLAINED TO YOU ABOUT BEING  
24 SUBJECTED TO DEROGATORY REMARKS BECAUSE HE OR SHE IS  
25 VIETNAMESE, BY MR. ORTEGA THAT IS?

1 A. NO.

2 Q. AND HAS ANY FEMALE EMPLOYEE COMPLAINED TO YOU ABOUT BEING  
3 TREATED UNFAIRLY BY MR. ORTEGA BECAUSE SHE'S A WOMAN?

4 A. NO.

5 MS. MURAKAMI: YOUR HONOR, MAY I HAVE ONE MINUTE  
6 WITH MY COUNSEL?

7 THE COURT: SURE.

8 (PAUSE IN PROCEEDINGS.)

9 MS. MURAKAMI: THAT'S ALL. THANK YOU.

10 THE COURT: ALL RIGHT. MS. NGUYEN, DO YOU HAVE SOME  
11 QUESTIONS?

12 MS. NGUYEN: YES, YOUR HONOR. THANK YOU, YOUR  
13 HONOR.

14 **AS-ON RECROSS-EXAMINATION**

15 BY MS. NGUYEN:

16 Q. WE WOULD LIKE TO GO BACK TO SOME OF THE VIDEOTAPES.

17 A. SO WOULD YOU LIKE ME UP THERE?

18 Q. YES. I'M SORRY.

19 WE'RE GOING TO GO TO CLIP 2, WHICH I BELIEVE IS  
20 EXHIBIT 553.

21 CAN YOU HEAR ME OKAY, MS. GILBERT?

22 A. YES.

23 Q. AND YOU CAN HEAR ME?

24 ALL RIGHT. SO I'D LIKE TO JUST GO THROUGH THIS REALLY  
25 QUICKLY AND ASK YOU SOME QUESTIONS ABOUT IT. I KNOW THAT WE

1 HAVE GONE THROUGH IT BEFORE.

2 ANDRE, PLEASE PLAY.

3 (VIDEO PLAYING.)

4 BY MS. NGUYEN:

5 Q. SO THIS IS MS. DANG BRINGING THE DRINKS TO THE CUSTOMER,  
6 RIGHT?

7 A. YES.

8 (VIDEO PLAYED.)

9 BY MS. NGUYEN:

10 Q. HE'S PAYING HER, RIGHT?

11 A. YES.

12 Q. AND NOW HE'S TAKING AN SIP OF THE DRINK THAT SHE JUST  
13 BROUGHT HIM?

14 A. YES.

15 Q. SHE'S GIVING HIM CHANGE?

16 A. CORRECT.

17 Q. AND HE WENT BACK TO PLAY?

18 A. CORRECT.

19 Q. HE DIDN'T SAY ANYTHING ABOUT HER HAVING BROUGHT HIM THE  
20 WRONG DRINK, DID HE?

21 A. AT THAT TIME, NO.

22 Q. NOW, THE NEXT CLIP THAT YOU HAD, CLIP NUMBER 3, STARTED AT  
23 00:06:10. THAT'S CLIP NUMBER 3, DEFENSE EXHIBIT.

24 WHAT I'D LIKE TO SHOW NOW IS WHAT HAPPENED IN BETWEEN 2  
25 AND 3 THAT WASN'T SHOWN EARLIER.

1           AND SO TO DO THAT WE'RE GOING TO GO TO EXHIBIT, THE ENTIRE  
2 VIDEO, WHICH WAS EXHIBIT 20 -- 1017.

3           AND I'D LIKE TO SHOW THE CLIP THAT WAS IN BETWEEN CLIP 2  
4 AND CLIP 3 THAT YOU SAW EARLIER.

5           SO WE'RE LOOKING AT 23:57 TO 23:58.

6           SO THIS IS WHERE THE CUSTOMER TOOK THE FIRST SIP?

7           (VIDEO PLAYED.)

8 BY MS. NGUYEN:

9 Q.   AND MS. DANG WALKED AWAY. SO THAT WAS THE END OF THE LAST  
10 CLIP?

11 A.   CORRECT.

12 Q.   DO YOU SEE HIM TAKING ANOTHER SIP OF THE DRINK?

13 A.   YES.

14           (VIDEO PLAYED.)

15 BY MS. NGUYEN:

16 Q.   AND NOW HE'S TAKING ANOTHER SIP. DO YOU SEE THAT?

17 A.   YES.

18 Q.   AND NOW THIS IS THE FOURTH SIP THAT HE HAS TAKEN?

19 A.   YES.

20 Q.   AND YOU DON'T SEE HIM TRYING TO SIGNAL TO ANY OF THE  
21 SERVERS TO TRY TO GET HIM A DIFFERENT DRINK BECAUSE IT WAS THE  
22 WRONG DRINK; CORRECT?

23 A.   I DON'T BELIEVE A SERVER HAD BEEN ON THE FLOOR PRIOR TO  
24 THAT. I DIDN'T NOTICE ANOTHER SERVER.

25 Q.   BUT HE DRANK IT FOUR TIMES?



1 A. YES.

2 Q. AND THIS IS MS. DANG COMING BACK. DO YOU SEE THAT?

3 AND HE DIDN'T ASK HER FOR A NEW DRINK? HE DIDN'T SAY WHAT  
4 SHE BROUGHT HIM WAS WRONG?

5 A. THIS IS -- I TURNED TOWARD YOU, SO I'M NOT SURE WHETHER  
6 YOU RESTARTED THIS VIDEO OR WHETHER WE'RE WATCHING IT FROM THE  
7 SAME.

8 Q. OKAY.

9 CAN YOU STOP THAT, PLEASE, ANDRE?

10 SO DURING THE CLIP THAT WAS BETWEEN THE FIRST AND SECOND  
11 CLIP THAT WAS SHOWN EARLIER WHEN YOU WERE TALKING WITH YOUR  
12 COUNSEL, THE CUSTOMER TOOK FOUR MORE SIPS; CORRECT?

13 A. RIGHT, I SAW THAT.

14 Q. AND HE WASN'T SIGNALLING TO ANYBODY, OR HE WASN'T LOOKING  
15 TO FIND ANYBODY TO SAY THAT THEY HAD BROUGHT HIM THE WRONG  
16 DRINK; CORRECT?

17 A. WELL, I BELIEVE I SAW HIM LOOK AROUND A FEW TIMES, BUT I  
18 ALSO DIDN'T SEE ANY OTHER FOOD SERVER WALK IN THAT AREA DURING  
19 THAT TIMEFRAME.

20 Q. AND EARLIER, I THINK WITH THE CLIP NUMBER 4, YOU SAW THE  
21 CUSTOMER PAY LINDA FOR THE NEW ORDER -- THE NEW DRINK THAT SHE  
22 BROUGHT HIM?

23 I'M SORRY. DO YOU REMEMBER SEEING THAT?

24 A. CORRECT. SHE WOULD HAVE BEEN REQUIRED TO GET PAYMENT.

25 Q. AND ISN'T IT TRUE, MS. GILBERT, THAT IF IT WAS THE WRONG

1 ORDER THAT THEY SHOULD HAVE JUST REPLACED THE ORDER FOR HIM?

2 A. OKAY. SO BECAUSE LINDA WAS A DIFFERENT FOOD SERVER, SHE  
3 WOULD HAVE TO RING THE SECOND DRINK UP IN THE POS SYSTEM TO GET  
4 IT FROM THE BARTENDER, SO NOW SHE HAS A SALE ON HER RECORD.

5 SHE WOULD HAVE TO GO APPROACH MS. DANG AND HAVE MS. DANG  
6 GET HER TICKET VOIDED IN ORDER TO REFUND THE CUSTOMER.

7 Q. AND IS THAT SOMETHING THAT IS BROUGHT TO A CASINO SHIFT  
8 MANAGER'S ATTENTION SO THAT HE COULD HELP WITH THE VOID?

9 A. YES. THE CASINO SHIFT MANAGERS ARE SUPPOSED TO AUTHORIZE  
10 VOIDS.

11 MS. NGUYEN: AND I'D LIKE, ANDRE, PLEASE, TO GO BACK  
12 TO CLIP NUMBER 6.

13 (VIDEO PLAYED.)

14 BY MS. NGUYEN:

15 Q. SO, MS. GILBERT, YOU WATCHED THIS AND YOU DIDN'T HEAR  
16 ANYTHING ON THE AUDIO, AND FROM WHAT YOU SAW YOU'RE SAYING THAT  
17 MS. DANG WAS ARGUING WITH THE CUSTOMER?

18 A. I BELIEVE I SAID THAT THE SECOND TIME SHE APPROACHED THE  
19 TABLE.

20 Q. LET'S WATCH IT.

21 (VIDEO PLAYING.)

22 BY MS. NGUYEN:

23 Q. DID YOU EVER ASK MS. DANG WHAT SHE WAS DOING?

24 A. I DID TALK TO HER ON THURSDAY, THE 8TH, WHEN WE GAVE HER  
25 THE COUNSELLING MEMO. I GAVE HER AMPLE OPPORTUNITY TO TELL US

1 WHAT HAPPENED.

2 Q. AND DID YOU HAVE AN INTERPRETER THERE TO HELP HER?

3 A. NO, I DID NOT.

4 Q. SO DO YOU SEE MS. ELIAS ALSO GESTURING? DOESN'T IT SEEM  
5 LIKE SHE WAS ALSO ARGUING?

6 A. IT LOOKS LIKE SHE WAS TALKING WITH HER HANDS.

7 Q. SO WHEN MS. DANG IS TALKING WITH HER HANDS, YOU THINK THAT  
8 SHE'S ARGUING, BUT WHEN MS. ELIAS IS TALKING WITH HER HANDS,  
9 YOU DON'T THINK SHE'S ARGUING?

10 A. NOBODY EVER ASKED ME ABOUT MS. DANG'S HANDS.

11 I WAS ASKED WHAT I SAW. I SAW MS. DANG TAKE A NOTE PAD  
12 OUT OF HER APRON AND APPEARED TO BE POINTING AT IT AND  
13 DISCUSSING IT WITH THE CUSTOMER.

14 Q. OKAY. SO DISCUSSING IS ARGUING?

15 A. I DON'T BELIEVE THAT I SAID THAT MS. DANG LOOKED TO BE  
16 ARGUING WITH THE CUSTOMER IN THIS CLIP.

17 I BELIEVE I STATED THAT IN THE SECOND CLIP WHERE SHE  
18 APPROACHED THE TABLE THE SECOND TIME.

19 Q. WOULD THAT HAVE BEEN CLIP 8, THE LAST CLIP?

20 A. IT WAS THE SECOND TIME THAT SHE APPROACHED THE TABLE.

21 Q. COULD WE SHOW THE CLIP 8, PLEASE?

22 DID MS. DANG EXPLAIN TO YOU THAT SHE WAS TRYING TO GET AN  
23 ORDER FROM THE CUSTOMER'S FRIEND WHO WAS STANDING?

24 A. NO, SHE DID NOT.

25 Q. ISN'T THAT THE CUSTOMER TIPPING MS. DANG?

1 A. I'M SORRY. I TURNED AWAY.

2 Q. OKAY. COULD WE GO BACK A LITTLE BIT, ANDRE. GO BACK A  
3 LITTLE BIT MORE. ISN'T -- I'M SORRY.

4 A. I'M SORRY. I WON'T TURN AWAY.

5 (VIDEO PLAYED.)

6 BY MS. NGUYEN:

7 Q. ISN'T THAT THE CUSTOMER TIPPING MS. DANG?

8 A. I SEE HIM PUTTING HIS HAND OUT. I DON'T KNOW WHAT HE'S  
9 DOING.

10 Q. RIGHT THERE (INDICATING)?

11 A. HE APPEARS TO BE EXTENDING HIS ARM OUT. I DON'T KNOW  
12 WHETHER THAT'S A TIP OR NOT.

13 Q. AND YOU NEVER ASKED MS. DANG ABOUT IT THOUGH, DID YOU?

14 A. ABOUT THAT MOTION?

15 Q. ABOUT WHAT HAPPENED WITH THE CUSTOMER.

16 A. YES, WE ASKED HER WHAT HAPPENED WITH THE INCIDENT IN  
17 TOTAL. WE DID NOT -- WE WERE NOT WATCHING THE VIDEO AT THE  
18 TIME, SO WE WERE NOT ASKING THEM ABOUT INDIVIDUAL CLIPS.

19 Q. AND DIDN'T SHE TELL YOU THAT THE CUSTOMER WAS NOT UNHAPPY  
20 WITH HER AND HE WAS TIPPING HER?

21 A. I DON'T BELIEVE THAT SHE MENTIONED THAT HE TIPPED HER.

22 SHE DID SAY THAT SHE AND THE CUSTOMER WERE TALKING IN  
23 VIETNAMESE, I BELIEVE.

24 Q. AND DO YOU SEE THAT THERE'S -- THAT THERE'S THAT DEALER  
25 WEARING THE WHITE SHIRT STANDING NEXT TO THE CUSTOMER, TO THE

1 CUSTOMER'S RIGHT AT THE SAME TABLE WHERE THE CUSTOMER IS  
2 SITTING?

3 A. HE'S SEATED. HE'S NOT STANDING. HE'S SEATED.

4 Q. NEXT TO THE CUSTOMER, RIGHT?

5 A. RIGHT HERE (INDICATING).

6 Q. RIGHT. AND DID ANYONE TALK TO THE DEALER TO ASK HIM WHAT  
7 HAPPENED?

8 A. NO.

9 Q. THAT'S IT. THANK YOU VERY MUCH. YOU CAN GO BACK TO THE  
10 WITNESS STAND.

11 MS. GILBERT, BACK IN APRIL OF 2007 WHEN YOU HAD THAT  
12 MEETING WITH MS. DANG TO TALK ABOUT THE COMPLAINTS THAT SHE  
13 MADE AGAINST LUCIO SUAREZ, DO YOU REMEMBER THAT?

14 A. YES.

15 Q. YOU HAD AN INTERPRETER THERE FOR HER, DIDN'T YOU?

16 A. I HAD MS. MINH VU SIT IN, YES.

17 Q. AND IT WAS BECAUSE YOU WANTED TO MAKE SURE THAT MS. DANG  
18 COULD UNDERSTAND WHAT WAS BEING COMMUNICATED TO HER?

19 A. YES.

20 Q. AND FOR HER TO BE ABLE TO COMMUNICATE TO YOU HER SIDE OF  
21 THE STORY?

22 A. WELL, IT WAS MORE TO MAKE SURE THAT SHE UNDERSTOOD ME.

23 Q. YOU DIDN'T CARE ABOUT HER SIDE OF THE STORY?

24 A. NO. I DIDN'T HAVE A PROBLEM UNDERSTANDING MS. DANG.

25 Q. SO SHE -- YOU COULD UNDERSTAND HER, BUT SHE COULDN'T

1 UNDERSTAND YOU?

2 A. I JUST WANTED TO MAKE SURE THAT SHE COULD UNDERSTAND ME.

3 Q. AND ISN'T IT TRUE THAT AS PART OF THE PERFORMANCE  
4 IMPROVEMENT PLANS THAT MR. WERNER HAD PROPOSED FOR MS. DANG IN  
5 DECEMBER OF 2009, THAT A VIETNAMESE SERVER WAS GOING TO BE  
6 ASSIGNED TO HELP HER SO THAT SHE COULD UNDERSTAND WHAT WAS  
7 EXPECTED OF HER?

8 A. SHE WAS SUPPOSED TO TRAIN WITH TWO SEPARATE FOOD SERVERS.  
9 ONE WAS SUPPOSED TO SPEAK HER LANGUAGE, YES.

10 Q. BUT WHEN YOU MET WITH MS. DANG IN OCTOBER OF 2009 TO  
11 EXPLAIN TO HER THAT SHE WAS BEING SUSPENDED, YOU DIDN'T HAVE  
12 ANYBODY THERE TO HELP HER UNDERSTAND WHAT WAS HAPPENING TO HER?

13 A. I DIDN'T FEEL ONE WAS NEEDED AND SHE DID NOT REQUEST ONE.

14 Q. ISN'T IT TRUE THAT SHE TRIED TO EXPLAIN TO YOU WHAT  
15 HAPPENED, BUT YOU DIDN'T LET HER EXPLAIN?

16 A. NO. I LET HER EXPLAIN.

17 Q. AND ISN'T IT TRUE THAT FOR THE DECEMBER 2009 MEETING THERE  
18 WAS ALSO NO TRANSLATOR WHO WAS GOING TO BE PRESENT?

19 A. THAT'S CORRECT.

20 Q. SO YOU DIDN'T CARE WHETHER OR NOT SHE COULD UNDERSTAND  
21 WHAT WAS BEING EXPLAINED TO HER?

22 A. I'M NOT SAYING I DIDN'T CARE.

23 THE FEELING WAS THAT A TRANSLATOR WAS NOT NEEDED.

24 Q. AND THAT MEETING WAS SUPPOSED TO BE -- TO EXPLAIN TO  
25 MS. DANG THE RESULTS OF THE INVESTIGATION INTO HER COMPLAINTS

1 AGAINST YOU AND MR. ORTEGA; CORRECT?

2 A. CORRECT, AND TO ADDRESS OUTSTANDING JOB PERFORMANCE  
3 ISSUES.

4 Q. AND BAY 101, ITS POSITION IS THAT IT TOOK MS. DANG'S  
5 COMPLAINTS SERIOUSLY; CORRECT? AND IT WENT THROUGH THE PROCESS  
6 OF HIRING AN INVESTIGATOR; CORRECT?

7 A. CORRECT.

8 Q. BUT IT DID NOT CARE WHETHER OR NOT SHE UNDERSTOOD WHAT THE  
9 RESULTS OF THE INVESTIGATION WAS?

10 THE COURT: WELL, IT'S GETTING ARGUMENTATIVE ABOUT  
11 THE INTERPRETER. WE'VE BEEN OVER THIS SAME POINT SEVERAL  
12 TIMES.

13 BY MS. NGUYEN:

14 Q. YOU STATED EARLIER, MS. GILBERT, THAT YOU AND MR. ORTEGA  
15 WERE THE ONES WHO MADE THE DECISION TO SUSPEND MS. DANG BECAUSE  
16 OF THE OCTOBER 2009 INCIDENT; CORRECT?

17 A. CORRECT.

18 Q. AND YOU DID THAT BASED ON THE REVIEW OF THE VIDEO?

19 A. CORRECT.

20 Q. PLUS THE STATEMENTS FROM LINDA ELIAS?

21 A. CORRECT.

22 Q. PLUS THE STATEMENT FROM ARLENE FONTILLAS?

23 A. CORRECT.

24 Q. AT THE TIME THAT YOU MADE THAT DECISION, YOU HAD NOT  
25 RECEIVED A STATEMENT FROM MR. KEN MEAKCHAROON?

1 A. I HAD NOT RECEIVED IT YET, NO.

2 Q. AND DID YOU INVESTIGATE AND TALK TO HIM PRIOR TO MAKING  
3 THAT DECISION?

4 A. NO.

5 Q. AND DO YOU KNOW, MS. GILBERT, THAT MR. MEAKCHAROON SAID  
6 THAT HE HEARD BOTH MS. ELIAS AND MS. DANG ARGUING NEAR THE  
7 EXPEDITER STATION?

8 A. NO, I'M NOT AWARE OF THAT.

9 Q. AND SO IF BOTH OF THEM WERE ARGUING, WHY WAS MS. ELIAS NOT  
10 ALSO DISCIPLINED?

11 A. OKAY. I JUST TOLD YOU THAT I WAS NOT AWARE THAT HE SAID  
12 THAT HE HAD HEARD BOTH OF THEM ARGUING.

13 MY UNDERSTANDING WAS THAT HE HEARD THAT IN THE KITCHEN,  
14 NOT OUT ON THE FLOOR.

15 Q. EARLIER WITH YOUR COUNSEL WE WENT THROUGH SOME OF THE  
16 COUNSELLING MEMOS THAT MS. DANG HAD AGAINST HER BACK IN 2007  
17 WITH RESPECT TO BEING LATE FOR WORK AND UNEXCUSED ABSENCES.

18 DO YOU REMEMBER THAT?

19 A. CORRECT.

20 Q. AND DO YOU KNOW WHETHER THOSE COUNSELLING MEMOS WERE PART  
21 OF THE MEMOS THAT WERE INCLUDED IN MR. WERNER'S PERFORMANCE  
22 IMPROVEMENT PLAN THAT WAS ON THE COUNSELLING MEMO FOR DECEMBER  
23 OF 2009?

24 A. I DON'T KNOW.

25 Q. AND DO YOU KNOW WHETHER HE TOOK THAT INFORMATION FROM



1 COUNSELLING MEMOS IN HIS PERSONNEL FILES?

2 A. I DON'T KNOW WHAT MR. WERNER USED TO PREPARE THAT OUTLINE.

3 Q. HE DIDN'T CONSULT WITH YOU ON IT?

4 A. NO, HE DID NOT.

5 Q. AND, MS. GILBERT, EARLIER YOU TALKED ABOUT PREPARING THE  
6 TERMINATION PAPER; CORRECT?

7 A. CORRECT.

8 Q. AND ACCORDING TO WHAT MR. WERNER TOLD YOU, MS. DANG WAS  
9 BEING TERMINATED FOR JOB ABANDONMENT?

10 A. THAT'S MY RECOLLECTION, YES.

11 Q. AND IT WAS BECAUSE SHE DIDN'T STAY FOR THE MEETING;  
12 CORRECT?

13 A. CORRECT.

14 Q. AND ISN'T IT TRUE, MS. GILBERT, THAT YOU YOURSELF, BEING  
15 THE H.R. MANAGER, ARE NOT AWARE OF ANY EMPLOYEE HAVING BEEN  
16 TERMINATED FOR REFUSING TO WORK OVERTIME?

17 A. FOR REFUSING TO WORK OVERTIME?

18 Q. YES.

19 A. NOT THAT I CAN RECALL.

20 Q. AND ISN'T IT TRUE THAT, IN YOUR CAPACITY AS AN H.R.  
21 MANAGER AT BAY 101, THAT YOU ARE NOT AWARE OF ANY EMPLOYEE  
22 BEING TERMINATED FOR NOT STAYING FOR A MEETING?

23 A. NOT THAT I CAN REMEMBER, NO.

24 Q. AND SO MS. DANG IS THE ONLY ONE?

25 A. WELL, SHE'S THE ONLY ONE THAT I CAN RECALL THAT REFUSED TO

1 ATTEND A MEETING.

2 Q. ARE YOU SAYING THAT THERE HAVE BEEN OTHER EMPLOYEES WHO  
3 HAVE NEVER STAYED FOR A MEETING BECAUSE THEY HAD OTHER  
4 OBLIGATIONS?

5 A. NOT THAT I'M AWARE OF.

6 Q. AND ARE YOU ALSO TESTIFYING THEN THAT THERE HAVE BEEN NO  
7 EMPLOYEES AT BAY 101 WHOSE REFUSED TO WORK OVERTIME BECAUSE OF  
8 PRIOR OBLIGATIONS?

9 A. I'M NOT SAYING THAT, NO. I WAS REFERRING TO MEETINGS.

10 Q. OKAY. BUT WITH RESPECT TO WORKING OVERTIME, YOU DON'T  
11 KNOW OF ANY EMPLOYEE WHO WAS TERMINATED FOR REFUSING TO WORK  
12 OVERTIME; CORRECT?

13 A. NOT THAT I'M AWARE OF, NO.

14 MS. NGUYEN: YOUR HONOR, THE PLAINTIFF HAS A NEW  
15 EXHIBIT THAT WE WOULD LIKE TO HAVE MARKED AS 32.

16 THE COURT: ALL RIGHT.

17 (PLAINTIFF'S EXHIBIT 32 WAS MARKED FOR IDENTIFICATION.)

18 MS. NGUYEN: MAY I APPROACH THE WITNESS?

19 THE COURT: YES.

20 MS. NGUYEN: THANK YOU.

21 Q. MS. GILBERT, I'VE JUST SHOWN YOU AN EXHIBIT THAT HAS BEEN  
22 MARKED EXHIBIT 32 AND IT'S A TWO-PAGE EXHIBIT. DO YOU SEE THE  
23 TWO-PAGE EXHIBIT BEFORE YOU?

24 A. YES.

25 Q. AND DO YOU RECOGNIZE THOSE DOCUMENTS?

1 A. YES. THE FIRST ONE IS DATED JANUARY 18TH, 2007. IT'S A  
2 NOTE FROM MY PBX OPERATOR, ANA, TO MY H.R. CLERK, KATHY. THEY  
3 WORK SEPARATE SHIFTS.

4 IT SAYS, "JOHN ST. CROIX CALLED TODAY 2:45 P.M. REGARDING  
5 CUC'S TERMINATION PAPERS AND HE SAID TO PUT IT ON HOLD BECAUSE  
6 HE'S STILL THINKING WHAT TO DO ABOUT HER CASE."

7 Q. SO BACK IN JANUARY OF 2007, MR. ST. CROIX WAS THINKING  
8 ABOUT TERMINATING HER; CORRECT?

9 A. THAT'S WHAT IT SOUNDS LIKE, YES.

10 Q. AND THEN THE SECOND PAGE OF THAT DOCUMENT, OR OF THAT  
11 EXHIBIT, CAN YOU PLEASE TELL US WHAT THAT IS?

12 A. IT'S ON BAY 101 LETTERHEAD AND IT'S DATED JANUARY 22ND,  
13 2007, AND IT IS NOTIFICATION TO THE UNION THAT MS. DANG'S  
14 EMPLOYMENT HAS BEEN ACTIVATED, SHE'S NOT BEEN TERMINATED AFTER  
15 ALL, AND IT IS SIGNED BY KATHY SIMS AND THAT WAS MY H.R. CLERK  
16 AT THE TIME.

17 Q. SO MR. ST. CROIX CHANGED HIS MIND ABOUT TERMINATING HER?

18 A. IT APPEARS SO, YES.

19 Q. AND I BELIEVE YOU TESTIFIED YESTERDAY THAT SHE WAS NEVER  
20 INFORMED ABOUT THIS TERMINATION; CORRECT?

21 A. I DON'T RECALL SAYING THAT YESTERDAY.

22 BUT I WAS NOT PRESENT WHEN THIS TOOK PLACE, SO I DON'T  
23 KNOW WHETHER SHE WAS EVER INFORMED OR NOT.

24 Q. OKAY. SO YOU HAVE NO RECOLLECTION OR NO INFORMATION?

25 A. WELL, I WAS NOT PRESENT WHEN THESE PAPERS WERE DRAFTED. I

1 SAW THEM AFTER THE FACT.

2 Q. AND HAVE YOU EVER SPOKEN WITH MR. ST. CROIX ABOUT HIS  
3 DECISION TO TERMINATE HER?

4 A. HE HAD SPOKEN TO ME PREVIOUS TO THIS AND SAID THAT HE HAD  
5 SOME CONCERNS ABOUT HER PERFORMANCE AND I BELIEVE HER ABILITY  
6 TO GET ALONG WITH HER COWORKERS.

7 BUT I WASN'T PRESENT WHEN HE MADE THE DECISION TO  
8 TERMINATE HER.

9 Q. AND DID HE TELL YOU WHY HE DECIDED TO WITHDRAW THE  
10 TERMINATION?

11 A. HE CHANGED HIS MIND.

12 Q. DID HE TELL YOU WHY?

13 A. I DON'T BELIEVE HE GAVE ME DETAILS, NO.

14 MS. NGUYEN: YOUR HONOR, THE PLAINTIFF MOVES TO HAVE  
15 EXHIBIT 32 ADMITTED INTO EVIDENCE.

16 MR. MCMANIS: NO OBJECTION.

17 THE COURT: 32 IS ADMITTED.

18 (PLAINTIFF'S EXHIBIT 32 WAS RECEIVED IN EVIDENCE.)

19 THE COURT: THIS PROBABLY WILL BE A GOOD TIME FOR A  
20 BREAK. WE'LL BE IN RECESS FOR 15 MINUTES.

21 THE WITNESS: DO YOU WANT ME TO JUST LEAVE THIS  
22 STUFF ON HERE?

23 MS. NGUYEN: YES. THANK YOU.

24 (RECESS FROM 10:09 A.M. UNTIL 10:30 A.M.)

25 THE COURT: YOU MAY CONTINUE.

1 MS. NGUYEN: YES, YOUR HONOR. WE HAVE BEEN  
2 PROVIDED --

3 THE COURT: YEAH, WE CAN TALK ABOUT THAT LATER IF  
4 YOU WANT.

5 BY MS. NGUYEN:

6 Q. I JUST HAVE ONE MINOR POINT LEFT.

7 MS. GILBERT, YOU STATED EARLIER THAT YOU RELIED UPON THE  
8 STATEMENTS OF MS. ELIAS AND MS. FONTILLAS; CORRECT?

9 A. CORRECT.

10 Q. AND THOSE STATEMENTS WERE OBTAINED BY MR. ORTEGA?

11 A. I BELIEVE THEY WERE TYPED BY HIS SECRETARY.

12 Q. DID YOU YOURSELF SPEAK WITH THOSE TWO WITNESSES?

13 A. NO, I DID NOT.

14 MS. NGUYEN: THANK YOU. THOSE ARE ALL OF THE  
15 QUESTIONS I HAVE FOR THIS WITNESS, YOUR HONOR.

16 THE COURT: OKAY. ANYTHING FURTHER?

17 MS. MURAKAMI: I JUST HAVE ONE QUESTION.

18 **AS-ON REDIRECT EXAMINATION**

19 BY MS. MURAKAMI:

20 Q. I JUST HAVE ONE QUESTION FOR THE JURY FOR YOU TO ANSWER.

21 A. OKAY.

22 Q. WHAT IS THE SICK POLICY AT BAY 101?

23 THE COURT: I BELIEVE WE CAN TAKE THAT UP LATER.

24 HAVE YOU TALKED BETWEEN YOURSELVES?

25 MR. MCMANIS: I DON'T THINK THERE'S ANY PROBLEMS

1 THAT EITHER OF US HAS WITH THAT QUESTION.

2 MS. NGUYEN: THAT'S FINE, YOUR HONOR.

3 THE COURT: ALL RIGHT. GO AHEAD.

4 MS. MURAKAMI: GO AHEAD.

5 THE WITNESS: OKAY. THE SICK LEAVE POLICY IN  
6 REFERENCE TO?

7 BY MS. MURAKAMI:

8 Q. EMPLOYEES.

9 A. TO PEOPLE TAKING SICK LEAVE?

10 Q. YES.

11 A. PEOPLE ARE TO CALL IN AT LEAST THREE HOURS PRIOR TO THEIR  
12 SHIFT STARTING IF THEY'RE ILL AND UNABLE TO MAKE THEIR SHIFT.

13 Q. AND DO THEY HAVE TO BRING A DOCTOR'S NOTE AFTER THEY COME  
14 BACK?

15 A. YES.

16 Q. AND WHAT HAPPENS IF THEY DON'T BRING A DOCTOR'S NOTE?

17 A. IT'S CONSIDERED UNEXCUSED.

18 Q. THANK YOU.

19 THAT'S ALL I HAVE.

20 MS. NGUYEN: I DO HAVE A FOLLOW-UP TO THAT, YOUR  
21 HONOR.

22 THE COURT: ALL RIGHT.

23 **FURTHER AS-ON RECROSS-EXAMINATION**

24 BY MS. NGUYEN:

25 Q. SO, MS. GILBERT, IF AN EMPLOYEE IS SICK AT HOME WITH A

1 COLD OR A FEVER BUT DOESN'T NEED TO GO SEE A DOCTOR, DOES  
2 BAY 101 STILL REQUIRE THEM TO GO SEE A DOCTOR TO GET A NOTE FOR  
3 THE ONE DAY OFF?

4 A. YES.

5 MS. MURAKAMI: OKAY. THAT'S ALL I HAVE, YOUR HONOR.

6 THE COURT: OKAY. I THINK YOU'RE FINISHED.

7 THE WITNESS: I'M EXCUSED FOR THE DAY?

8 THE COURT: YES.

9 THE WITNESS: OKAY. THANK YOU.

10 MS. NGUYEN: YOUR HONOR, THE PLAINTIFF WOULD LIKE TO  
11 CALL AS ITS NEXT WITNESS MR. NICK ORTEGA.

12 THE COURT: OKAY. COME FORWARD AND THE CLERK WILL  
13 SWEAR YOU IN AND YOU CAN TAKE THE WITNESS STAND.

14 **(PLAINTIFF'S WITNESS, NICHOLAS ORTEGA, SWORN.)**

15 THE WITNESS: I DO.

16 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.  
17 PLEASE STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

18 THE WITNESS: NICHOLAS JOSEPH ORTEGA, O-R-T-E-G-A.

19 **AS-ON CROSS-EXAMINATION**

20 BY MS. NGUYEN:

21 Q. GOOD MORNING, MR. ORTEGA.

22 A. GOOD MORNING.

23 Q. MR. ORTEGA, WHEN DID YOU START WORKING AT BAY 101?

24 A. '93.

25 Q. I'M SORRY.

1 A. '93.

2 Q. YOU MIGHT WANT TO PULL THE MICROPHONE CLOSER TO YOU.  
3 THANK YOU.

4 WHEN MR. JOHN ST. CROIX WAS STILL ALIVE, HE WAS THE  
5 DIRECTOR OF THE FOOD AND BEVERAGE DEPARTMENT; CORRECT?

6 A. YES.

7 Q. AND AT THE TIME YOU WERE THE SECOND IN COMMAND IN THE  
8 DEPARTMENT UNDER HIM?

9 A. YES.

10 Q. AS EXECUTIVE SOU CHEF?

11 A. YES.

12 Q. AND AFTER HE PASSED IN NOVEMBER OF 2007, YOU THEN TOOK  
13 OVER THE POSITION AS THE HEAD OF THE FOOD AND BEVERAGE  
14 DEPARTMENT?

15 A. INTERIM.

16 Q. OKAY. AND IS THAT THE POSITION THAT YOU NOW HOLD?

17 A. I DON'T UNDERSTAND THE QUESTION.

18 Q. ARE YOU CURRENTLY THE HEAD OF THE FOOD AND BEVERAGE  
19 DEPARTMENT?

20 A. YES.

21 Q. AND IN 2006, WHEN MY CLIENT WAS WORKING AT BAY 101, YOU  
22 SUPERVISED THE KITCHEN STAFF; CORRECT?

23 A. YES.

24 Q. AND DIRECTLY UNDERNEATH YOU WERE LEAD COOKS?

25 A. YES.



1 Q. AND THERE WAS ONE LEAD COOK PER SHIFT?

2 A. YES.

3 Q. AND WHEN YOU WEREN'T WORKING, THEN THE LEAD COOKS WERE THE  
4 ONES IN CHARGE?

5 A. YES.

6 Q. AND DO YOU RECALL A MAN BY THE NAME OF GEORGE RODRIGUEZ  
7 CASTILLO?

8 A. YES.

9 Q. AND HE WAS ONE OF THE LEAD COOKS ON THE GRAVEYARD SHIFT?

10 A. YES.

11 Q. AND LUCIO SUAREZ, DID HE FILL IN AS A LEAD COOK WHEN THE  
12 OTHER LEAD COOKS WERE NOT AROUND?

13 A. YES.

14 Q. AND AS HEAD OF THE DEPARTMENT, YOU CAN MAKE DECISIONS  
15 REGARDING DISCIPLINING EMPLOYEES IN YOUR DEPARTMENT; ISN'T THAT  
16 RIGHT?

17 A. YES.

18 Q. AND YOU CAN DECIDE WHOM TO TERMINATE?

19 A. REPEAT THE QUESTION, PLEASE.

20 Q. YOU CAN MAKE DECISIONS REGARDING TERMINATING EMPLOYEES IN  
21 YOUR DEPARTMENT, CAN'T YOU?

22 A. I CAN.

23 Q. I'D LIKE TO ASK YOU A FEW QUESTIONS REGARDING THE REST  
24 BREAKS AND MEAL PERIODS POLICIES IN YOUR DEPARTMENT.

25 NOW, BACK IN 2009, YOUR EMPLOYEES WERE REQUIRED TO FILL

1 OUT DAILY TRACKING SHEETS; CORRECT?

2 A. YES.

3 Q. AND TO KNOW SUPPOSEDLY THE TIME THAT THEY TOOK BREAKS AND  
4 LUNCHES?

5 A. YES.

6 Q. AND IN YOUR DEPARTMENT, EMPLOYEES HAD TO CHECK IN WITH  
7 THEIR SUPERVISOR OR THE LEAD IN CHARGE OF THE SHIFT BEFORE THEY  
8 WENT ON LUNCH BREAKS OR REST BREAKS?

9 A. REPEAT THAT, PLEASE.

10 Q. DID YOUR EMPLOYEES HAVE TO CHECK IN WITH THE SUPERVISOR  
11 BEFORE THEY WENT ON BREAKS?

12 A. YES.

13 Q. BECAUSE IT WAS IMPORTANT FOR THE SUPERVISOR TO MAKE SURE  
14 THAT THERE WAS COVERAGE DURING THOSE BREAKS; CORRECT?

15 A. WELL, TO KNOW WHO IS ON THE FLOOR OR TO MAKE SURE THERE  
16 WAS COVERAGE, YES.

17 Q. RIGHT. YOU DON'T WANT HALF OF YOUR EMPLOYEES GOING ON  
18 BREAKS AT THE SAME TIME; CORRECT?

19 A. CORRECT.

20 Q. AND DURING THAT TIME PERIOD, WE'RE STILL TALKING ABOUT  
21 2006, 2009, YOU HAVE RECEIVED COMPLAINTS FROM SOME OF YOUR  
22 EMPLOYEES THAT THEY SOMETIMES HAD TO MISS REST BREAKS AND MEAL  
23 BREAKS?

24 A. I DON'T REMEMBER THE QUESTION THERE.

25 Q. DURING THAT PERIOD OF TIME -- YOU KNOW WE'RE TALKING ABOUT

1 2006 AND 2009, RIGHT?

2 A. YES.

3 Q. DID YOU RECEIVE ANY COMPLAINTS FROM ANY OF YOUR EMPLOYEES  
4 REGARDING THEIR NOT BEING ABLE TO TAKE THEIR BREAKS?

5 A. YES.

6 Q. AND THAT INCLUDES REST BREAKS AND MEAL BREAKS; CORRECT?

7 A. NO.

8 Q. AND WHAT KIND OF BREAKS DID THEY HAVE TO MISS?

9 A. LUNCH.

10 EXCUSE ME. I DIDN'T UNDERSTAND THAT QUESTION.

11 Q. DID YOU RECEIVE ANY COMPLAINTS FROM EMPLOYEES THAT THEY  
12 WERE NOT ABLE TO TAKE THEIR 10-MINUTE REST BREAKS?

13 A. ONCE.

14 Q. AND WHO WAS THAT FROM?

15 A. JORGE CASTILLO.

16 Q. AND NO ONE ELSE?

17 A. NOT THAT I RECALL.

18 Q. AND DID YOU RECEIVE COMPLAINTS FROM ANY EMPLOYEE REGARDING  
19 THEIR NOT BEING ABLE TO TAKE THEIR LUNCH BREAKS?

20 A. NO. ONE IN PARTICULAR, JUST ONE.

21 Q. AND WHO WOULD THAT BE?

22 A. GEORGE CASTILLO.

23 Q. AND WERE YOU AWARE, MR. ORTEGA, THAT SOME OF YOUR  
24 EMPLOYEES WERE NOT ABLE TO TAKE LUNCH BREAKS BECAUSE IT WAS TOO  
25 BUSY IN THE CASINO?

1 A. NO.

2 Q. NO ONE HAD COME TO YOU WITH THAT COMPLAINT?

3 A. NO.

4 Q. AND ARE YOU AWARE THAT SOMETIMES YOUR EMPLOYEES HAD BEEN  
5 CALLED BACK TO WORK EVEN THOUGH THEY HAD CLOCKED OUT FOR LUNCH?

6 A. NO.

7 Q. NO ONE HAD TOLD YOU ABOUT THAT?

8 A. NOT THAT I RECALL.

9 Q. AND OTHER THAN MR. CASTILLO, ALL OF YOUR EMPLOYEES WERE  
10 ABLE TO TAKE REST BREAKS?

11 A. TO MY KNOWLEDGE.

12 Q. AND THEY WERE ALL ABLE TO TAKE THEIR LUNCH BREAKS?

13 A. TO MY KNOWLEDGE.

14 Q. ALL OF THE TIME?

15 A. "ALL OF THE TIME"?

16 REPEAT THE QUESTION AGAIN.

17 Q. WELL, YOU SAID THAT YOU ARE NOT AWARE OF ANYONE HAVING TO  
18 MISS IT.

19 SO AS FAR AS YOU KNOW, THEY WERE ALL ABLE TO TAKE THEIR  
20 REST BREAKS AND MEAL BREAKS OTHER THAN MR. CASTILLO?

21 A. THERE MAY HAVE BEEN SOME. I DON'T RECALL WHO.

22 Q. BUT YOU RECALL THAT THERE WERE SOME INSTANCES?

23 A. POSSIBLY.

24 Q. AS YOU SIT HERE TODAY, DO YOU RECALL ANY OTHER INSTANCES  
25 OTHER THAN MR. CASTILLO'S COMPLAINTS?

1 A. NO.

2 THE COURT: MAYBE -- I'M NOT SURE, BUT THERE MAY BE  
3 A DIFFERENCE BETWEEN A COMPLAINT AND SOMEONE NOTIFYING THEM  
4 THAT THEY MISSED A LUNCH BREAK.

5 IN OTHER WORDS, SOMEBODY MIGHT HAVE MISSED A LUNCH BREAK  
6 AND SUBMITTED A NOTIFICATION OF THAT AND NOT COMPLAINED BUT  
7 WANTED BAY 101 TO KNOW.

8 I'M NOT SUGGESTING THAT THAT HAPPENED, BUT I JUST THINK  
9 THAT THE QUESTION MAY BE POSSIBLY CONFUSING.

10 MS. NGUYEN: I'LL CLEAR THAT UP, YOUR HONOR.

11 Q. SO I UNDERSTAND THAT YOU RECEIVED COMPLAINTS FROM  
12 MR. CASINO AND NO ONE ELSE; CORRECT?

13 A. NO.

14 Q. YOU RECEIVED COMPLAINTS FROM OTHER PEOPLE OTHER THAN  
15 MR. CASTILLO?

16 A. I HEARD FROM MY LEADS.

17 Q. AND WHAT DID YOU HEAR ABOUT EMPLOYEES NOT BEING ABLE TO  
18 TAKE THEIR BREAKS?

19 A. SOME SAY THAT THEY DIDN'T HAVE TIME.

20 Q. AND DID YOU DO ANYTHING ABOUT THAT?

21 A. YES. I TOLD THEM THAT THEY NEEDED TO MAKE TIME TO MAKE  
22 SURE THAT THEY ALL GOT ON THEIR BREAKS.

23 Q. AND DID YOU FIND OUT WHY THEY WEREN'T -- WHY THEY DIDN'T  
24 HAVE THE TIME TO GO ON THE BREAKS?

25 A. REPEAT THE QUESTION.

1 Q. YOU SAID THAT SOME OF THEM SAID THAT THEY DIDN'T HAVE  
2 TIME. WAS IT BECAUSE THE CASINO WAS TOO BUSY?

3 A. THAT'S WHAT THEY SAID, YES.

4 Q. AND DID ANY OF YOUR LEADS SAY THAT THEY WERE NOT ABLE TO  
5 LET THE EMPLOYEES GO ON THE BREAKS BECAUSE IT WAS TOO BUSY?

6 A. NO.

7 Q. IN 2006 WHEN MS. DANG BEGAN WORKING AT BAY 101, YOU WERE  
8 HER IMMEDIATE SUPERVISOR; CORRECT?

9 A. YES.

10 Q. AND I BELIEVE YOU STATED IN THE PAST THAT SHE DID A GOOD  
11 JOB IN TERMS OF HER PERFORMANCE AS A COOK.

12 DO YOU RECALL THAT?

13 A. YES.

14 Q. SO YOU DIDN'T HAVE ANY PROBLEM WITH HER PERFORMANCE WHEN  
15 SHE WAS A COOK IN THE KITCHEN; CORRECT?

16 A. NOT CORRECT.

17 Q. YOU SAID EARLIER THAT IT WAS TRUE THAT SHE DIDN'T -- THAT  
18 SHE DID A GOOD JOB IN TERMS OF HER PERFORMANCE AS A COOK.

19 A. A GOOD JOB?

20 Q. UH-HUH.

21 A. YES, BUT --

22 Q. WHAT WAS NOT CORRECT ABOUT THE EARLIER STATEMENT?

23 A. NOT ALL OF THE TIME.

24 Q. WHAT WERE ISSUES WITH RESPECT TO HER BEING A COOK?

25 A. PUTTING UP THE FOOD ON TIME, NOT BEING PREPARED.

1 Q. MR. ORTEGA, YOU REMEMBER WHEN WE LAST MET IT WAS WITH --  
2 AT YOUR DEPOSITION; CORRECT?

3 A. CORRECT.

4 Q. AND DO YOU RECALL AT THE TIME THAT YOU TOLD ME THAT YOU  
5 HAD -- THAT YOUR OPINION WAS THAT SHE DID A GOOD JOB IN TERMS  
6 OF PERFORMANCE AS A COOK?

7 A. YES.

8 Q. OKAY. SO TODAY YOU'RE STATING IT A LITTLE DIFFERENTLY?

9 A. NO.

10 Q. SO EVEN THOUGH SHE HAD SOME ISSUES, YOU STILL THOUGHT SHE  
11 DID A GOOD JOB AS A COOK?

12 A. YES.

13 Q. AND AT THE END OF APRIL 2007, SHE WAS CHANGED TO THE  
14 MORNING SHIFT; CORRECT?

15 A. WHAT WAS THE DATE?

16 Q. APRIL 2007 HER SHIFT CHANGED?

17 A. YES.

18 Q. AND THAT WAS BECAUSE MR. ST. CROIX WANTED TO GET HER AWAY  
19 FROM WORKING WITH LUCIO SUAREZ?

20 A. THAT WAS MY UNDERSTANDING.

21 Q. DID YOU HAVE ANY INVOLVEMENT WITH THE INVESTIGATION INTO  
22 MS. DANG'S COMPLAINT IN APRIL OF 2007?

23 A. NOT THAT I RECALL. NOT THAT I RECALL.

24 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT EXHIBIT 1011, 1011.  
25 IT WOULD BE IN THE WHITE BINDER. HAVE YOU FOUND IT?

1 A. YES.

2 Q. THIS EXHIBIT REFERS TO BE A SUPPLEMENTAL REPORT REGARDING  
3 WHAT HAPPENED TO MS. DANG ON APRIL 12TH, 2007.

4 DO YOU SEE THAT? DO YOU RECALL THAT INCIDENT, MR. ORTEGA?

5 A. NO.

6 Q. DO YOU RECALL THAT AFTER THAT INCIDENT YOU AND MS. GILBERT  
7 CALLED MS. DANG AT HOME TO ASK HER ABOUT IT?

8 A. I DON'T RECALL.

9 Q. YOU DON'T RECALL TALKING TO HER AND HAVING HER SAY THAT  
10 MR. LUCIO CALLED HER ALL OF THE TIME?

11 A. I DON'T RECALL THAT.

12 Q. I'M GOING TO REFER YOU TO THE NEXT EXHIBIT, 1012. THAT'S  
13 BEEN ADMITTED IN MS. -- I'M SORRY.

14 MS. GILBERT, WHEN SHE WAS HERE, STATED THAT THOSE WERE HER  
15 NOTES FROM APRIL OF 2007.

16 AND SHE NOTED THAT ON APRIL 13TH OF 2007 YOU AND SHE  
17 CALLED MS. DANG TO FOLLOW UP ON THE SECURITY REPORT.

18 DOES THAT REFRESH YOUR RECOLLECTION?

19 A. NO.

20 Q. SO IS IT YOUR TESTIMONY THEN THAT YOU DID NOT HAVE ANY  
21 INVOLVEMENT IN INVESTIGATING THE INCIDENT IN APRIL OF 2007  
22 BETWEEN MS. DANG AND MR. SUAREZ?

23 A. I DON'T RECALL.

24 Q. YOU DON'T RECALL ANY INVOLVEMENT?

25 A. I DON'T RECALL.



1 Q. WHEN WAS THE FIRST TIME THAT YOU FOUND OUT THAT MS. DANG  
2 HAD COMPLAINED ABOUT MR. SUAREZ?

3 A. I DON'T RECALL THAT.

4 Q. ISN'T IT TRUE THAT YOU ONLY FOUND OUT AFTER MR. ST. CROIX  
5 TOLD YOU, AFTER HE SWITCHED MS. DANG TO THE MORNING SHIFT?

6 A. YES.

7 Q. ISN'T IT TRUE THAT MR. SUAREZ IS A FRIEND OF  
8 MR. ST. CROIX?

9 A. I'M SORRY. I STILL DON'T UNDERSTAND THAT QUESTION.

10 Q. DO YOU KNOW IF MR. SUAREZ IS A FRIEND OF MR. ST. CROIX?

11 A. NO.

12 Q. AND HAVE YOU EVER BEEN TO MR. ST. CROIX'S HOUSE?

13 A. YES.

14 Q. AND HAVE YOU EVER BEEN THERE WITH MR. SUAREZ?

15 A. NO.

16 Q. HAVE YOU EVER SEEN MR. SUAREZ SOCIALIZE WITH MR. ST. CROIX  
17 OUTSIDE OF BAY 101?

18 A. NO.

19 Q. HAVE YOU YOURSELF EVER SOCIALIZED WITH MR. SUAREZ OUTSIDE  
20 OF BAY 101?

21 A. YES.

22 Q. AND YOU'RE FRIENDS WITH -- I'M SORRY.

23 HAVE YOU EVER SOCIALIZED WITH MR. SUAREZ OUTSIDE OF  
24 BAY 101?

25 A. NO.

1 Q. AND BESIDES MS. DANG, YOU'RE AWARE OF OTHER WOMEN IN THE  
2 FOOD AND BEVERAGE DEPARTMENT WHO COMPLAINED ABOUT MR. SUAREZ  
3 HARASSING THEM, AREN'T YOU?

4 A. NO.

5 Q. YOU DIDN'T KNOW ABOUT NINA'S COMPLAINT?

6 A. NO.

7 Q. MR. ORTEGA, DIDN'T YOU RECEIVE A REPORT FROM  
8 GEORGE CASTILLO ABOUT MR. SUAREZ HARASSING MS. DANG?

9 A. NO.

10 Q. HAVE YOU EVER SPOKEN WITH MR. CASTILLO ABOUT MS. DANG'S  
11 CLAIM ABOUT BEING HARASSED BY MR. SUAREZ?

12 A. NO.

13 Q. ARE YOU AWARE, MR. ORTEGA, THAT PRIOR TO THE APRIL 2007  
14 INCIDENT THAT MR. ST. CROIX HAD RECEIVED REPORTS AND COMPLAINTS  
15 FROM MS. DANG ABOUT MR. SUAREZ'S HARASSMENT OF HER?

16 A. NO.

17 Q. MR. ST. CROIX HAD NEVER TALKED TO HER ABOUT THAT? I'M  
18 SORRY, WHAT WAS YOUR ANSWER?

19 A. COULD YOU REPEAT THAT QUESTION?

20 Q. DID MR. ST. CROIX EVER TALK TO YOU ABOUT THE COMPLAINTS  
21 THAT HE RECEIVED FROM MS. DANG REGARDING MR. SUAREZ'S  
22 HARASSMENT?

23 A. YES.

24 Q. AND WHEN DID HE TALK TO YOU ABOUT THAT?

25 A. AFTER HE SWITCHED WITH LUCIO, AFTER HE SWITCHED.

1 Q. BUT NO TIME BEFORE THAT?

2 A. NO.

3 Q. AND ARE YOU AWARE THAT IN APRIL OF 2007 MS. DANG FILED A  
4 WRITTEN COMPLAINT REGARDING MR. SUAREZ?

5 A. NO.

6 Q. YOU HAVE NEVER SEEN THE LETTER THAT SHE WROTE TO H.R.?

7 A. NO.

8 Q. H.R. HAS NEVER INFORMED YOU OF HER COMPLAINT AGAINST  
9 MR. SUAREZ?

10 A. NOT THAT I RECALL.

11 Q. ARE YOU AWARE THAT IN JANUARY OF 2007 MR. ST. CROIX HAD  
12 DECIDED TO TERMINATE MS. DANG?

13 A. NO.

14 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT EXHIBIT 1001 AND GO  
15 TO THE BATE STAMP PAGE OF 1341.

16 MR. ORTEGA, HAVE YOU FOUND IT?

17 A. NO.

18 Q. AND IT'S EXHIBIT 1001.

19 A. YES.

20 Q. AND THEN THE BATES STAMP IS BAY 1341. IT WOULD BE ALMOST  
21 TOWARD THE END. I THINK IT'S THE THIRD FROM THE END.

22 A. 1431?

23 Q. 1341.

24 THE COURT: YOU'RE WELCOME --

25 MS. NGUYEN: YOUR HONOR, MAY I?

1 Q. MR. ORTEGA, THAT'S A COUNSELLING MEMO WITH YOUR SIGNATURE  
2 ON THE BOTTOM; CORRECT?

3 A. YES.

4 Q. AND IT'S DATED JANUARY 17TH, 2007; RIGHT?

5 A. YES.

6 Q. AND WITH THIS COUNSELLING MEMO YOU WERE SUSPENDING  
7 MS. DANG FOR THREE DAYS -- FOR TWO DAYS NOT SHOWING UP FOR WORK  
8 FOR THREE DAYS; CORRECT?

9 A. YES.

10 Q. AND THE DAYS THAT SHE IS BEING ACCUSED OF NOT SHOWING UP  
11 TO WORK IS JANUARY 12TH, 13TH, AND 14TH OF 2007; CORRECT?

12 A. YES.

13 Q. AND WERE YOU AWARE, MR. ORTEGA, THAT SHE WAS OFF THOSE  
14 DAYS BECAUSE SHE HAD SUFFERED AN INJURY AT BAY 101?

15 A. I DON'T RECALL.

16 Q. DO YOU RECALL THAT SHE HAD AN INJURY WHERE A BOWL FELL ON  
17 HER FACE?

18 A. YES.

19 Q. AND DO YOU RECALL THAT SHE WENT TO THE E.R. AFTER THAT  
20 INJURY?

21 A. YES.

22 Q. AND I'M GOING TO ASK YOU TO TAKE A LOOK AT -- IT WOULD BE  
23 EXHIBIT 1, PAGE 17. SO IT'S IN THE BINDER WITH THE YELLOW  
24 PAPER.

25 YES. SO IT'S THE FIRST EXHIBIT, PAGE 17.

1 A. DO I NEED TO KEEP THIS OPEN?

2 Q. YOU'RE DONE WITH THAT. THANK YOU.

3 EXHIBIT 1, PAGE 17. SORRY.

4 HAVE YOU FOUND IT, MR. ORTEGA?

5 A. YES.

6 Q. AND SO IT WOULD BE PAGE 17 OF EXHIBIT 1. IT'S A WORK  
7 RELEASE FORM FROM O'CONNOR HOSPITAL.

8 DO YOU SEE THAT?

9 A. I DO NOT.

10 Q. THAT'S A WORK RELEASE FORM FROM O'CONNOR HOSPITAL.

11 DO YOU SEE THAT?

12 A. YES.

13 Q. AND IT'S DATED AT THE BOTTOM --

14 ANDRE, IF YOU COULD MOVE IT UP A LITTLE BIT, PLEASE --

15 OR -- I'M SORRY. SCROLL DOWN. UP A LITTLE BIT TO SHOW THE

16 DATE OF THAT FORM. THERE.

17 IT'S DATED JANUARY 11TH, 2007.

18 DO YOU SEE THAT?

19 A. YES.

20 Q. AND IN THAT THE DOCTOR GAVE MS. DANG THREE DAYS OFF AND  
21 DIDN'T RELEASE HER TO GO BACK TO WORK UNTIL THE 15TH OF  
22 JANUARY.

23 DO YOU SEE THAT?

24 A. YES.

25 Q. ISN'T IT TRUE THAT SHE TURNED THIS IN TO YOUR DEPARTMENT?

1 A. AFTER THE 15TH.

2 Q. IT'S NOT TRUE THAT HER FAMILY MEMBER CAME TO GIVE YOU THAT  
3 FORM?

4 A. NO.

5 Q. AND SO IS IT YOUR TESTIMONY THAT YOU SUSPENDED HER BECAUSE  
6 YOU DIDN'T KNOW THAT SHE WAS OUT ON WORK RELEASE FORM?

7 A. YES.

8 Q. DID YOU CALL TO FIND OUT HOW SHE WAS DOING AFTER THE  
9 INJURY AT BAY 101?

10 A. YES.

11 Q. DID YOU TALK TO HER?

12 A. NO.

13 Q. DID YOU TALK TO ANY FAMILY MEMBERS TO FIND OUT HOW SHE WAS  
14 DOING?

15 A. THERE WAS NO ANSWER.

16 Q. AND WHEN SHE CAME BACK, DID SHE EXPLAIN TO YOU THAT SHE  
17 WAS OUT BECAUSE THE DOCTORS ALLOWED HER DAYS OFF TO RECOVER?

18 A. YES.

19 Q. AND YOU STILL SUSPENDED HER ANYWAY?

20 A. YES.

21 Q. IN 2008, MR. ORTEGA, MS. DANG SUBMITTED A REQUEST TO YOU  
22 TO TRANSFER FROM THE KITCHEN OUT TO THE SERVER -- TO THE FLOOR  
23 TO BECOME A SERVER; CORRECT?

24 A. WHAT WAS THE DATE?

25 Q. IN 2008.

1 A. YES.

2 Q. AND SHE WAS EVENTUALLY TRANSFERRED IN FEBRUARY OF 2009;  
3 CORRECT?

4 A. YES.

5 Q. AND ISN'T IT TRUE THAT SHE HAD TO SUBMIT SEVERAL REQUESTS  
6 BEFORE YOU APPROVED HER TRANSFER?

7 A. I DON'T RECALL.

8 Q. ISN'T IT TRUE THAT DURING THAT PERIOD OF TIME WHEN SHE HAD  
9 SUBMITTED HER TRANSFER REQUEST THAT YOU HAD TWO OPENINGS FOR  
10 SERVERS?

11 A. YES.

12 Q. AND ISN'T IT TRUE THAT YOU WERE INTERVIEWING PEOPLE FROM  
13 OUTSIDE OF BAY 101 FOR THOSE POSITIONS?

14 A. YES.

15 Q. AND ISN'T IT TRUE THAT YOU KNEW THAT MS. DANG WANTED THE  
16 TRANSFER?

17 A. YES.

18 Q. BUT YOU WERE NOT CONSIDERING HER?

19 A. SHE HAD BEEN CONSIDERED.

20 Q. BUT YOU HIRED PEOPLE FROM OUTSIDE?

21 A. YES.

22 Q. AND WHY WAS THAT?

23 A. THEY HAD SEVERAL YEARS OF EXPERIENCE IN THE CASINO  
24 BUSINESS AS CASINO SERVERS AND AT THE TIME I NEEDED SOMEONE  
25 RIGHT AWAY AND THERE WAS LESS TRAINING TO BE DONE.

1 Q. AND ISN'T IT TRUE, MR. ORTEGA, THAT MS. DANG ALSO HAD SOME  
2 EXPERIENCE IN THE RESTAURANT BUSINESS?

3 A. YES.

4 Q. AND WHEN YOU APPROVED HER TRANSFER IN FEBRUARY OF 2010,  
5 YOU PROVIDED THAT TRAINING; CORRECT?

6 A. YES.

7 Q. SO WHY COULDN'T SHE HAVE BEEN PROVIDED TRAINING TO GET HER  
8 INTO THE SERVER POSITION?

9 A. I HAD A LACK OF SERVERS.

10 Q. DID YOU KNOW THAT SHE WANTED TO GET OUT TO THE FLOOR TO  
11 GET AWAY FROM LUCIO SUAREZ?

12 A. NO.

13 Q. WERE YOU AWARE THAT SHE WAS UNCOMFORTABLE WORKING AROUND  
14 LUCIO SUAREZ?

15 A. NO.

16 Q. ISN'T IT TRUE, MR. ORTEGA, THAT KEN MEAKCHAROON HAD  
17 INFORMED YOU THAT MS. DANG WAS UNCOMFORTABLE WORKING AROUND  
18 LUCIO SUAREZ?

19 A. I DON'T RECALL.

20 Q. MR. ORTEGA, IT'S TRUE, ISN'T IT, THAT YOU AND MAMA AHN  
21 WOULD JOKE AROUND DURING THE WORK HOURS?

22 A. YES.

23 Q. AND SOMETIMES YOU WOULD MAKE ETHNIC JOKES?

24 A. YES.

25 Q. AND ISN'T IT TRUE THAT YOU HAVE STATED IN THE PAST THAT



1 THE VIETNAMESE, THEY'RE ALL BAD?

2 A. NO.

3 Q. WHAT KIND OF ETHNIC JOKES DID YOU MAKE WITH MAMA ANH?

4 A. SHE WOULD SAY F...ING MEXICANS AND WE WOULD SAY F...ING  
5 VIETNAMESE.

6 Q. AND DO YOU RECALL AN INCIDENT WHERE SOMEONE CAME TO FIX  
7 THE OVEN INSIDE OF THE KITCHEN AT BAY 101?

8 A. WHEN?

9 Q. DO YOU RECALL THAT YOU TOLD MS. DANG THAT THE OVEN WAS NOT  
10 WORKING BECAUSE IT WAS A VIETNAMESE MAN WHO FIXED IT?

11 A. NO.

12 Q. MR. ORTEGA, ISN'T IT TRUE THAT MAMA AHN, YOU HAVE USED HER  
13 IN THE PAST TO TRANSLATE FOR MS. DANG WHEN YOU WANTED TO MAKE  
14 SURE THAT MS. DANG COULD UNDERSTAND?

15 A. YES.

16 Q. NOW, IN OCTOBER OF 2009, YOU HAD A MEETING WITH  
17 MS. GILBERT AND MS. DANG TO TELL HER ABOUT THE SUSPENSION;  
18 CORRECT?

19 A. WHICH SUSPENSION?

20 Q. THIS IS IN OCTOBER OF 2009. DO YOU RECALL THE INCIDENT  
21 WITH LINDA ELIAS?

22 A. YES.

23 Q. AND AS A RESULT OF THAT INCIDENT YOU SUSPENDED MS. DANG;  
24 CORRECT?

25 A. YES.

1 Q. YOU LEARNED ABOUT THAT INCIDENT FROM KEN?

2 A. YES.

3 Q. AND YOU WENT ABOUT INVESTIGATING THE INCIDENT; CORRECT?

4 A. YES.

5 Q. AND AS PART OF YOUR INVESTIGATION, YOU SPOKE WITH AND  
6 OBTAINED A STATEMENT FROM LINDA ELIAS?

7 A. YES.

8 Q. AND YOU ALSO SPOKE WITH AND OBTAINED A STATEMENT FROM  
9 ARLENE FONTILLAS?

10 A. YES.

11 Q. DID YOU SPEAK WITH MR. MEAKCHAROON?

12 A. YES.

13 Q. AND DID HE SUBMIT A HANDWRITTEN STATEMENT TO YOU?

14 A. YES.

15 Q. AND THEN YOU HAD BETSY TYPE UP HIS HANDWRITTEN STATEMENT?

16 A. YES.

17 Q. AND DID HE EVER SUBMIT HIS -- THE TYPED UP STATEMENT TO  
18 MR. MEAKCHAROON TO REVIEW AND SIGN?

19 A. I DON'T RECALL.

20 Q. AND BESIDES THOSE THREE INDIVIDUALS, DID YOU SPEAK WITH  
21 MS. DANG ABOUT WHAT HAPPENED WITH THE OCTOBER 4TH, 2009,  
22 INCIDENT BEFORE YOU MADE THE DECISION TO SUSPEND HER?

23 A. I DON'T RECALL.

24 Q. AND WHEN YOU HAD THE MEETING IN H.R. WITH MS. DANG TO  
25 SUSPEND HER, IT WAS JUST YOU, MS. DANG, AND MS. GILBERT;

1 CORRECT?

2 A. YES.

3 Q. AND THERE WAS NO ONE ELSE FROM THE UNION THERE; CORRECT?

4 A. REPEAT THAT.

5 Q. THERE WAS NO ONE ELSE FROM THE UNION AT THAT MEETING;  
6 CORRECT?

7 A. NO. CORRECT.

8 Q. NOW -- AND THERE WAS NO TRANSLATOR THERE TO HELP MS. DANG  
9 UNDERSTAND WHAT WAS BEING SAID TO HER; CORRECT?

10 A. CORRECT.

11 Q. AND THERE WAS NO TRANSLATOR TO HELP HER EXPLAIN HER SIDE  
12 OF THE STORY TO YOU; ISN'T THAT TRUE?

13 A. TRUE.

14 Q. AND YOU ALSO REVIEWED THE SURVEILLANCE VIDEO FROM THE  
15 OCTOBER 4TH, 2009, INCIDENT, DIDN'T YOU?

16 A. YES.

17 Q. AND THE VIDEO DIDN'T HAVE ANY AUDIO, RIGHT?

18 A. RIGHT.

19 Q. AND DID YOU REVIEW THE VIDEO WITH LINDA ELIAS?

20 A. NO.

21 Q. DID YOU REVIEW THE VIDEO WITH MS. DANG?

22 A. NO.

23 Q. AND DID YOU MAKE CONCLUSIONS THAT MS. DANG WAS ARGUING  
24 WITH THE CUSTOMER BASED ON YOUR REVIEW OF THAT VIDEO?

25 A. YES.

1 Q. DID YOU EVER ASK MS. DANG FOR A WRITTEN STATEMENT ABOUT  
2 WHAT HAPPENED WITH THE OCTOBER 4TH, 2009, INCIDENT?

3 A. NO.

4 Q. DID YOU SPEAK TO THE DEALER WHO WAS SITTING NEXT TO THE  
5 CUSTOMER REGARDING THE OCTOBER 2009 INCIDENT?

6 A. NO.

7 Q. AND YOU NEVER SPOKE WITH THE CUSTOMER EITHER; CORRECT?

8 A. CORRECT.

9 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT EXHIBIT 1001. IT  
10 WOULD BE IN THE WHITE BINDER. AND LOOK AT PAGE BAY 1332. IT  
11 WOULD BE THE COUNSELLING MEMO FROM OCTOBER 8TH, 2009?

12 A. COULD YOU REPEAT THAT?

13 Q. BAY 1332.

14 A. WHICH EXHIBIT?

15 Q. EXHIBIT 1001.

16 A. AND BAY WHAT?

17 Q. 1332.

18 A. OKAY.

19 Q. SO YOU PREPARED THAT COUNSELLING MEMO YOURSELF, DIDN'T  
20 YOU?

21 A. JENNIFER GILBERT.

22 Q. I'M SORRY?

23 A. JENNIFER GILBERT HELPED ME TYPE IT.

24 Q. AND THE INFORMATION ON THERE CAME FROM YOU?

25 A. YES.

1 Q. AND YOU WERE SUSPENDING MS. DANG FOR ARGUING WITH A  
2 COWORKER AND A CUSTOMER; CORRECT?

3 A. YES.

4 Q. AND WHEN YOU REVIEWED THE SURVEILLANCE VIDEO, WAS IT YOUR  
5 CONCLUSION THAT ELIAS WAS NOT ARGUING WITH MS. DANG IN FRONT OF  
6 THE CUSTOMER?

7 A. YES.

8 Q. AND WAS IT ALSO YOUR CONCLUSION THAT MS. ELIAS WAS NOT  
9 ARGUING WITH THE CUSTOMER?

10 A. YES.

11 Q. AND WAS THAT BASED ON MS. ELIAS'S VERSION OF WHAT  
12 HAPPENED?

13 A. NO.

14 Q. YOU DIDN'T HEAR ANYTHING ON THE VIDEO, DID YOU?

15 A. NO.

16 Q. SO IT'S BASED ON WHAT YOU SAW, OR ASSUMED FROM WHAT YOU  
17 SAW FROM THE VIDEO; CORRECT?

18 A. NO.

19 Q. WHAT ELSE DID YOU BASE YOUR CONCLUSION ON?

20 A. ANOTHER WITNESS.

21 Q. FROM ARLENE FONTILLAS?

22 A. YES.

23 Q. AND DID SHE SAY THAT MS. ELIAS WAS NOT ARGUING?

24 A. YES.

25 Q. DID YOU TALK TO KEN, TOO, REGARDING WHAT HAPPENED?

1 A. WHEN I ARRIVED AT WORK, YES.

2 Q. AND ISN'T IT TRUE THAT KEN SAID THAT HE HEARD BOTH OF THEM  
3 ARGUING?

4 A. NO.

5 Q. I'M GOING TO ASK YOU TO FLIP ONE PAGE TO 1331. THAT'S  
6 ANOTHER COUNSELLING MEMO THAT YOU PRESENTED TO MS. DANG ON  
7 OCTOBER 8TH, 2009; IS THAT CORRECT?

8 A. CORRECT.

9 Q. AND IN THAT YOU WERE GIVING HER A WARNING REGARDING NOT  
10 BALANCING HER ENVELOPE; RIGHT?

11 A. YES.

12 Q. ISN'T IT TRUE, MR. ORTEGA, THAT YOU HAD PREVIOUSLY, JUST A  
13 FEW DAYS BEFORE THAT, HAD COMPLIMENTED HER ON A GOOD JOB WELL  
14 DONE?

15 A. I DON'T RECALL.

16 Q. AND ISN'T IT TRUE THAT YOU TOLD THE INVESTIGATOR THAT SHE  
17 DID NOT HAVE ANYMORE BALANCING MISTAKE INPUT TO ACCOUNTING  
18 SINCE SEPTEMBER?

19 A. CAN YOU REPEAT THAT, PLEASE.

20 Q. DID YOU TELL THE INVESTIGATOR, THE ONE THAT WAS SENT OUT  
21 TO INVESTIGATE, CAROLE EDMAN, THAT MS. DANG DID NOT HAVE ANY  
22 BALANCING MISTAKE INPUT TO ACCOUNTING SINCE SEPTEMBER OF 2009?

23 A. I DON'T RECALL.

24 Q. DIDN'T YOU TELL THE INVESTIGATOR THAT MS. DANG HAD  
25 IMPROVED IN TERMS OF PERFORMANCE?

1 A. EXPLAINED "IMPROVED." I DON'T UNDERSTAND "IMPROVED."

2 Q. DO YOU RECALL TELLING THE INVESTIGATOR THAT HER  
3 PERFORMANCE HAD IMPROVED?

4 A. YES.

5 Q. AND IN THIS COUNSELLING MEMO DATED OCTOBER 8TH, 2009, IT  
6 STATES THAT IF SHE CONTINUES WITH BALANCING MISTAKES, THAT SHE  
7 WOULD FACE MORE SEVERE DISCIPLINARY ACTION.

8 DO YOU SEE THAT? I KNOW -- I THINK THERE'S A TYPO THERE,  
9 BUT YOU MEANT MORE SEVERE DISCIPLINARY ACTION; RIGHT?

10 A. YES.

11 Q. AND THAT THE COMPANY MIGHT BE ABLE TO OFFER HER A POSITION  
12 IN THE KITCHEN?

13 A. YES.

14 Q. AND DOES THAT MEAN THAT SHE COULD BE SENT BACK TO THE  
15 KITCHEN TO WORK?

16 A. YES.

17 Q. AND DID YOU KNOW THAT SHE WANTED TO GET AWAY FROM THE  
18 KITCHEN TO GET AWAY FROM LUCIO SUAREZ?

19 A. NO.

20 Q. MS. DANG SENT A LETTER TO MR. WERNER IN OCTOBER OF 2009 TO  
21 EXPLAIN ABOUT YOU AND MS. GILBERT. WERE YOU AWARE OF THAT?

22 A. YES.

23 Q. BECAUSE MR. WERNER TOLD YOU ABOUT IT; CORRECT?

24 A. NOT CORRECT.

25 Q. HOW DID YOU LEARN ABOUT IT?

1 A. TOM BOWLING.

2 Q. AND WHAT DID MR. BOWLING TELL YOU?

3 A. THAT THERE WAS A LETTER SENT TO UPPER MANAGEMENT AND  
4 OWNERSHIP.

5 Q. AND DID YOU ALSO HAVE A MEETING WITH MR. WERNER ABOUT THAT  
6 COMPLAINT?

7 A. A MEETING?

8 Q. DID YOU HAVE ANY DISCUSSION WITH MR. WERNER ABOUT  
9 MS. DANG'S OCTOBER 13TH, 2009, COMPLAINT?

10 A. YES.

11 Q. AND MR. WERNER ADVISED YOU NOT TO RETALIATE AGAINST  
12 MS. DANG; IS THAT CORRECT?

13 A. YES.

14 Q. AND MR. WERNER TOLD YOU THAT HE WAS ORDERING AN  
15 INVESTIGATION?

16 A. YES.

17 Q. AND DURING THIS INVESTIGATION, MR. ORTEGA, DID YOU OBTAIN  
18 A STATEMENT FROM YOUR ASSISTANT, BETSY COCHRAN?

19 A. I DON'T RECALL. A STATEMENT?

20 Q. I'D LIKE YOU TO TAKE A LOOK AT EXHIBIT 14. YES, THAT  
21 E-MAIL.

22 DOES THAT REFRESH YOUR RECOLLECTION, MR. ORTEGA, THAT YOU  
23 OBTAINED A STATEMENT FROM YOUR ASSISTANT?

24 A. YES.

25 Q. DID MS. GILBERT ADVISE YOU TO GO GET THAT STATEMENT?



1 A. NO.

2 Q. YOU DID IT ON YOUR OWN?

3 A. YES.

4 Q. AND YOU DID IT DURING THE INVESTIGATION CONDUCTED BY  
5 MS. CAROLE EDMAN; CORRECT?

6 A. I DON'T RECALL.

7 Q. THE STATEMENT IS DATED NOVEMBER 4TH, 2009.

8 DO YOU SEE THAT?

9 A. YES.

10 Q. AND ISN'T IT TRUE THAT YOU ALSO OBTAINED ANOTHER STATEMENT  
11 FROM ONE OF YOUR LEAD COOKS BY THE NAME OF JOSE SOLIS?

12 A. YES.

13 Q. ALSO DURING THAT SAME TIME?

14 A. I DON'T RECALL.

15 Q. IF YOU WOULD TAKE A LOOK AT EXHIBIT 15.

16 A. YES.

17 Q. AND WAS THAT SOMETHING THAT YOU DID ON YOUR OWN AS WELL?

18 A. YES.

19 Q. NO ONE ADVISED YOU TO DO IT; CORRECT?

20 A. NO.

21 Q. CORRECT?

22 A. CORRECT.

23 Q. AND DID YOU TURN IN THOSE STATEMENTS TO H.R.?

24 A. YES.

25 Q. AND WERE YOU AWARE, MR. ORTEGA, THAT MS. EDMAN WAS

1 INTERVIEWING SOME OF YOUR EMPLOYEES TO INVESTIGATE THE  
2 COMPLAINTS AGAINST YOU?

3 A. WAS I AWARE? YES.

4 Q. BECAUSE YOU HAD TO MAKE SCHEDULE CHANGES TO ALLOW FOR SOME  
5 OF THOSE INTERVIEWS; CORRECT?

6 A. YES.

7 Q. SO YOU KNEW WHICH EMPLOYEES WERE BEING INTERVIEWED BY  
8 MS. EDMAN; CORRECT?

9 A. YES.

10 Q. DID YOU LEARN THE RESULT OF MS. EDMAN'S INVESTIGATION?

11 A. YES.

12 Q. AND YOU LEARNED ABOUT IT IN A MEETING WITH MR. WERNER,  
13 MS. GILBERT, AND MR. SHAW?

14 A. YES.

15 Q. AND THAT MEETING TOOK PLACE SHORTLY -- A FEW DAYS BEFORE  
16 DECEMBER 21ST, 2009?

17 A. YES.

18 Q. AND AT THAT MEETING, MR. WERNER TOLD YOU ABOUT THE RESULTS  
19 OF THE INVESTIGATION; CORRECT?

20 A. YES.

21 Q. AND HE HAD PREPARED AN OUTLINE TO BE DISCUSSED WITH  
22 MS. DANG?

23 A. YES.

24 Q. AND YOU WERE TO SET UP A MEETING WITH MS. DANG TO DISCUSS  
25 THE RESULT OF THE INVESTIGATION?

1 A. YES.

2 Q. AND IN ADDITION TO THE RESULT OF THE INVESTIGATION, YOU  
3 WERE ALSO TO DISCUSS WITH MS. DANG A PERFORMANCE IMPROVEMENT  
4 PLAN?

5 A. YES.

6 Q. AND THERE WERE PLANS TO HAVE -- TO GIVE HER MORE TRAINING?

7 A. REPEAT THE QUESTION.

8 Q. AND PART OF THE PLANS WAS TO GIVE HER MORE TRAINING;  
9 RIGHT?

10 A. YES.

11 Q. AND TO HAVE A SERVER WHO SPEAKS VIETNAMESE TRAIN WITH HER  
12 TO HELP HER IMPROVE; CORRECT?

13 A. YES.

14 Q. WERE YOU ALLOWED TO READ A COPY OF THE OUTLINE PREPARED BY  
15 MR. WERNER?

16 A. I DON'T RECALL.

17 Q. AND ON THE MORNING OF DECEMBER 21ST, 2009, THAT WAS WHEN  
18 YOU INFORMED MS. DANG THAT SHE WAS TO GO TO H.R. FOR A MEETING;  
19 CORRECT?

20 A. YES.

21 Q. AND YOU TOOK KEN MEAKCHAROON WITH YOU BECAUSE YOU WANTED  
22 HIM TO BE A WITNESS TO THAT CONVERSATION BETWEEN YOU AND  
23 MS. DANG?

24 A. YES.

25 Q. AND THAT WAS ABOUT 4:00 A.M. IN THE MORNING?

1 A. YES.

2 Q. AND YOU ASKED MS. DANG TO GO TO H.R. FOR A MEETING AFTER  
3 SHE GOT OFF WORK AT 7:00 O'CLOCK IN THE MORNING; RIGHT?

4 A. NO.

5 Q. WHAT DID YOU ASK HER?

6 A. I ASKED HER SHE NEEDED TO BE AT A MEETING AT 7:00 A.M. IN  
7 HUMAN RESOURCES.

8 Q. AND THAT WAS ALL YOU TOLD HER?

9 A. YES.

10 Q. AND YOU DIDN'T TELL HER WHAT THE MEETING WAS ABOUT, DID  
11 YOU?

12 A. THAT THERE WAS GOING TO BE A DISCUSSION WITH, YOU KNOW,  
13 VINCE SHAW, MYSELF, AND JENNIFER AND THAT SHE NEEDED TO BE  
14 THERE.

15 Q. BUT YOU DIDN'T TELL HER WHAT THE MEETING WAS ABOUT, RIGHT?

16 A. NO. NO.

17 Q. NOT RIGHT OR YOU DIDN'T TELL HER?

18 A. NO, I DIDN'T TELL HER.

19 Q. THANK YOU. AND SHE TOLD YOU SHE WAS TIRED?

20 A. YES.

21 Q. AND SHE TOLD YOU SHE HAD OTHER PLANS?

22 A. NO.

23 Q. DID SHE TELL YOU THAT SHE HAD SOMETHING ELSE TO DO?

24 A. NO.

25 Q. MR. ORTEGA, YOUR DEPOSITION IN THIS CASE WAS TAKEN ON

1 OCTOBER 25TH, 20011.

2 DO YOU RECALL THAT?

3 A. YES.

4 Q. AND AT THAT DEPOSITION YOU SWORE TO TELL THE TRUTH UNDER  
5 PENALTY OF PERJURY; RIGHT?

6 A. YES.

7 MS. NGUYEN: YOUR HONOR, I'D LIKE TO READ FROM  
8 MR. ORTEGA'S DEPOSITION TRANSCRIPT, PAGE 12, LINE 19 TO 22.

9 ACTUALLY FROM LINE 15, PLEASE, JUST TO GIVE IT CONTEXT.

10 MR. MCMANIS: NO OBJECTION. THANK YOU.

11 THE COURT: ALL RIGHT.

12 MS. NGUYEN: MAY I START, YOUR HONOR?

13 THE COURT: YES.

14 MS. NGUYEN: LINE 15. THE QUESTION WAS: "DID YOU  
15 TELL HER WHAT THE MEETING WAS ABOUT?

16 "ANSWER: NO."

17 Q. DO YOU RECALL THAT?

18 A. YES.

19 Q. AND NEXT QUESTION: "DID SHE ASK YOU WHAT THE MEETING WAS  
20 ABOUT?

21 "ANSWER: I DON'T REMEMBER."

22 IS THAT STILL YOUR TESTIMONY TODAY?

23 A. YES.

24 Q. "QUESTION: THEN HOW DID SHE RESPOND WHEN YOU TOLD HER  
25 THAT YOU NEEDED TO GO TO THE MEETING?

1 "ANSWER: SHE SAID THAT SHE WAS TIRED AND THAT SHE HAD  
2 SOMETHING TO DO."

3 DO YOU RECALL THAT?

4 A. SHE SAID THAT SHE WAS TIRED, BUT I JUST DON'T RECALL HER  
5 SAYING THAT SHE HAD SOMETHING TO DO.

6 Q. BUT YOU TOLD ME THAT IN 2011?

7 A. THAT'S WHAT YOU SAID.

8 Q. AND AFTER SHE TOLD YOU THAT, DID YOU SAY THAT SHE HAD TO  
9 GO TO THE MEETING OR ELSE?

10 A. NO.

11 Q. DID YOU EVER TELL HER THAT SHE WOULD BE DISCIPLINED IF SHE  
12 DIDN'T GO TO THE MEETING?

13 A. NO.

14 Q. IN FACT, YOU ACTUALLY APPROVED AN EARLY OUT FOR HER THAT  
15 MORNING; CORRECT?

16 A. YES.

17 Q. AND WHICH MEANT THAT YOU LET HER GO EARLY; CORRECT?

18 A. YES.

19 Q. AND YOU HAD A CONVERSATION WITH HER HUSBAND SHORTLY AFTER  
20 YOU TALKED TO HER; IS THAT RIGHT?

21 A. YES.

22 Q. AND ISN'T IT TRUE THAT MR. SUMMERS, HER HUSBAND, TOLD YOU  
23 THAT AFTER WORK MS. DANG HAD TO GO PICK UP HER DAUGHTER?

24 A. NO.

25 Q. HE DIDN'T TELL YOU THAT HER DAUGHTER WAS WAITING FOR HER

1 AT A BUS STATION?

2 A. NO.

3 Q. AND HE DIDN'T TELL YOU THAT HE NEEDED HIS WIFE TO COME  
4 HOME TO TAKE HIM TO KAISER FOR SKIN SURGERY?

5 A. NO.

6 Q. ISN'T IT TRUE THAT HE ASKED YOU WHAT THE MEETING WAS  
7 ABOUT?

8 A. YES.

9 Q. AND THAT YOU DIDN'T LET -- YOU DIDN'T TELL HIM?

10 A. I SAID I WAS NOT AT LIBERTY. NO, I DIDN'T TELL HIM.

11 Q. AND DIDN'T HE ASK YOU HOW LONG THE MEETING WAS GOING TO  
12 LAST?

13 A. I DON'T RECALL.

14 Q. AND ISN'T IT TRUE THAT YOU DIDN'T TELL HIM HOW LONG THE  
15 MEETING WAS GOING TO LAST?

16 A. I DON'T RECALL.

17 Q. AND HE ASKED YOU IF THERE WAS GOING TO BE A UNION REP  
18 THERE WITH MS. DANG.

19 DO YOU RECALL THAT?

20 A. CAN YOU REPEAT THAT QUESTION?

21 Q. DIDN'T MS. -- DID MR. SUMMERS ASK YOU IF THERE WAS GOING  
22 TO BE A UNION REP AT THE MEETING WITH MS. DANG?

23 A. DID HE ASK ME?

24 Q. YES.

25 A. NO.

1 Q. YOU DON'T RECALL THAT?

2 A. NO, HE DIDN'T ASK ME.

3 Q. AND THERE WASN'T GOING TO BE A UNION REP THERE; CORRECT?

4 A. CORRECT.

5 Q. AND THERE WASN'T GOING TO BE ANYONE TO HELP TRANSLATE FOR  
6 MS. DANG; CORRECT?

7 A. CORRECT.

8 Q. AND ISN'T IT TRUE THAT MR. SUMMERS OFFERED TO HAVE HER  
9 COME BACK ON HER DAY OFF FOR THE MEETING?

10 A. NO.

11 Q. YOU DON'T RECALL THAT?

12 A. HE DIDN'T ASK. HE DIDN'T ASK.

13 Q. DID HE SAY THAT YOU CAN HAVE MR. WERNER CALL HIM?

14 A. YES.

15 Q. AND AFTER YOU SPOKE WITH MR. SUMMERS, YOU CALLED MR. SHAW  
16 TO LET HIM KNOW THAT THE MEETING WASN'T GOING TO HAPPEN;  
17 CORRECT?

18 A. YES.

19 Q. AND ISN'T IT TRUE THAT MR. SHAW TOLD YOU THAT -- DIDN'T HE  
20 SAY, WHY DON'T WE JUST HOLD OFF ON THE MEETING?

21 A. I DON'T RECALL.

22 Q. I'D LIKE TO JUST REFRESH YOUR RECOLLECTION WITH RESPECT TO  
23 THAT.

24 YOUR HONOR, WE WOULD LIKE TO READ FROM THE TRANSCRIPT FROM  
25 THE ARBITRATION HEARING IN THIS MATTER.



1 MR. MCMANIS: JUST A SECOND, PLEASE. PAGE AND LINE,  
2 PLEASE.

3 MS. NGUYEN: 44, 16 TO 23.

4 (PAUSE IN PROCEEDINGS.)

5 MR. MCMANIS: NO OBJECTION.

6 BY MS. NGUYEN:

7 Q. MR. ORTEGA, DO YOU REMEMBER THAT MS. DANG GRIEVED THIS  
8 TERMINATION?

9 THE COURT: CAN I SEE COUNSEL FOR A MINUTE?

10 (SIDE-BAR OFF THE RECORD.)

11 BY MS. NGUYEN:

12 Q. MR. ORTEGA, I'D LIKE TO READ YOUR TESTIMONY FROM A PRIOR  
13 PROCEEDING.

14 A. OKAY.

15 Q. YOU STATED THAT "SHE ASKED TO GO HOME. SHE WANTED AN  
16 EARLY OUT AND I SAID OKAY. NOTHING I CAN DO ABOUT THAT. AND I  
17 SAID SURE. I WAS GOING TO CALL. I WENT AND I CALLED VINCENT  
18 SHAW AND LEFT A MESSAGE ON HIS CELL PHONE.

19 "HE CALLED ME BACK WITHIN 15 TO 30 MINUTES. I EXPLAINED  
20 TO HIM THE SITUATION. HE SAID, WELL, YOU KNOW, THERE'S NOT A  
21 WHOLE LOT WE CAN DO. WHY DON'T WE JUST HOLD OFF ON THE  
22 MEETING."

23 DOES THAT REFRESH YOUR RECOLLECTION?

24 A. YES.

25 Q. WAS THERE ANY EFFORT TO TRY TO RESCHEDULE THE MEETING?

1 A. NO.

2 Q. BECAUSE YOU LEARNED SUBSEQUENTLY THAT MR. WERNER HAD FIRED  
3 MS. DANG; CORRECT?

4 A. NO.

5 Q. WHY WAS THERE NO EFFORT TO RESCHEDULE THE MEETING?

6 A. BECAUSE HER HUSBAND SAID THAT HE REFUSED TO LET HER COME  
7 TO ANY MEETING THAT WAS GOING TO BE WITHOUT HIM AND HE WAS  
8 CONTACTING A LAWYER.

9 Q. AND HE DIDN'T TELL YOU THAT THEY WOULD COME BACK FOR THE  
10 MEETING?

11 A. NO.

12 Q. MR. ORTEGA, ISN'T IT TRUE THAT NO ONE IN YOUR DEPARTMENT  
13 HAS EVER BEEN FIRED FOR REFUSING TO STAY TO WORK OVERTIME?

14 A. I DON'T UNDERSTAND THE QUESTION.

15 Q. YOU'RE IN CHARGE OF THE FOOD AND BEVERAGE DEPARTMENT;  
16 RIGHT?

17 A. YES.

18 Q. AND SOMETIMES YOU NEED EMPLOYEES TO WORK OVERTIME?

19 A. YES.

20 Q. ISN'T IT TRUE THAT YOU'VE NEVER FIRED ANYBODY FOR NOT  
21 BEING ABLE TO WORK OVERTIME?

22 A. TRUE. CAN I REPHRASE THAT?

23 Q. SURE.

24 A. NO, I'LL STAY WITH TRUE.

25 Q. OKAY. BECAUSE NOT BEING -- NOT WANTING TO STAY TO WORK

1 OVERTIME, THAT'S NOT INSUBORDINATION, IS IT?

2 A. NO.

3 Q. AND IT CERTAINLY IS NOT JOB ABANDONMENT FOR NOT BEING ABLE  
4 TO STAY TO WORK OVERTIME, IS IT?

5 A. YES.

6 Q. YOU DO CONSIDER IT JOB ABANDONMENT FOR NOT STAYING TO WORK  
7 OVERTIME?

8 A. THERE WAS NO OVERTIME.

9 Q. I'M SORRY?

10 A. THERE WAS NO OVERTIME.

11 Q. YOU NEVER HAD TO ASK AN EMPLOYEE TO WORK OVERTIME?

12 A. YES.

13 Q. AND YOU NEVER HAD AN EMPLOYEE TELL YOU THAT THEY COULDN'T  
14 STAY BECAUSE THEY HAD PRIOR OBLIGATIONS?

15 A. YES.

16 Q. YES, YOU HAVE HAD EMPLOYEES SAY THAT?

17 A. YES.

18 Q. AND HAVE YOU CONSIDERED -- LET ME REPHRASE THAT.

19 HAVE YOU EVER FIRED ANY EMPLOYEE FOR STAYING OVERTIME?

20 A. NO.

21 Q. MR. ORTEGA, YOU HAVE WORKED SOMEWHERE ELSE BESIDES BAY 101  
22 WITH MR. GEORGE CASTILLO, HAVEN'T YOU?

23 A. NO.

24 Q. MR. ORTEGA, ARE YOU AWARE OF OTHER EMPLOYEES COMPLAINING  
25 THAT THEY FEEL THAT YOU HAVE TREATED THEM UNFAIRLY?

1 A. NO.

2 Q. HAVE YOU BEEN TOLD OF ANY OF THE SPECIFICS OF THE  
3 INVESTIGATOR'S INVESTIGATION?

4 A. NO.

5 Q. AS A RESULT OF THE INVESTIGATOR'S WORK, YOU WERE SENT FOR  
6 MORE TRAINING?

7 A. NO.

8 Q. WHAT ACTION --

9 A. I WASN'T SENT.

10 Q. THERE WERE SOME ACTIONS THAT WERE RECOMMENDED BY THE  
11 INVESTIGATOR THAT MR. WERNER TALKED TO YOU ABOUT; RIGHT?

12 A. YES.

13 Q. AND WHAT WERE THOSE?

14 A. REPEAT THAT AGAIN, PLEASE.

15 Q. WHAT WERE THOSE?

16 A. THE FULL QUESTION. I DIDN'T UNDERSTAND.

17 THE COURT: WHAT DID MR. WERNER TALK TO YOU ABOUT?  
18 WHAT DID MR. WERNER TALK TO YOU ABOUT?

19 THE WITNESS: WELL, ABOUT THE INVESTIGATION?

20 THE COURT: YES.

21 THE WITNESS: JUST NOT TO DO ANY MORE BANTERING  
22 BETWEEN MS. ANYH HUYNH AND MYSELF AND WE STOPPED THAT.

23 AND THEN I DID SOME TRAINING WITH THE -- DID SUPERVISOR  
24 TRAINING WHICH HAD TO DO WITH DIFFERENT BACKGROUNDS AND  
25 CULTURES AND THINGS LIKE THAT AND HOW TO MANAGE MY STAFF A

1 LITTLE MORE DIVERSELY.

2 MS. NGUYEN: THANK YOU. THOSE ARE ALL OF THE  
3 QUESTIONS I HAVE FOR NOW, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 **AS-ON DIRECT EXAMINATION**

6 BY MS. MURAKAMI:

7 Q. GOOD MORNING, MR. ORTEGA.

8 A. GOOD MORNING.

9 Q. I WANT TO GO BACK TO MR. GEORGE CASTILLO'S COMPLAINT ABOUT  
10 NOT BEING ABLE TO TAKE A REST BREAK. WAS THAT JUST ONE TIME?

11 A. YES.

12 Q. AND SAME THING WITH REGARD TO NOT BEING ABLE TO TAKE A  
13 LUNCH BREAK. WAS THAT JUST ONE TIME?

14 A. YES.

15 Q. AND WHAT DID YOU ADVISE HIM TO DO IN RESPONSE TO THOSE  
16 COMPLAINTS?

17 A. TO -- CAN I ELABORATE? I SPOKE WITH MY SUPERVISOR, WHICH  
18 WAS JOHN ST. CROIX, AND HE SAID YOU TELL HIM -- THE REASON HE  
19 SAID HE COULDN'T TAKE BREAKS IS BECAUSE HE HAD HIS HANDHELD  
20 PHONE WHICH CONTACTS US WITH THE CASINO, AND WE ADVISED HIM YOU  
21 NEED TO GIVE THE TELEPHONE TO ONE OF THE COOKS AND HAVE HIM  
22 TAKE CARE OF THE PHONE CALLS THAT COME IN.

23 IF THERE WAS AN EMERGENCY, THEN YOU WOULD NEED TO CONTACT  
24 HIM, BUT OTHER THAN THAT HE NEEDED TO GIVE US HIS PHONE AND  
25 TAKE HIS LUNCH BREAKS.

1 Q. OKAY. AND AS FAR AS YOU REMEMBER, HE NEVER COMPLAINED --  
2 MR. CASTILLO NEVER COMPLAINED TO YOU AGAIN ABOUT NOT BEING ABLE  
3 TO TAKE MEAL BREAKS OR REST BREAKS? DID HE COMPLAIN TO YOU  
4 AGAIN?

5 A. NO.

6 Q. AND SO DO YOU RECALL MS. DANG BEING SWITCHED TO THE DAY  
7 SHIFT IN APRIL OF 2007?

8 A. YES.

9 Q. AND DID YOU HEAR ANY COMPLAINTS FROM HER REGARDING  
10 MR. SUAREZ AFTER SHE WAS SWITCHED TO THE DAY SHIFT?

11 A. NO.

12 Q. DO YOU STILL JOKE AROUND WITH MAMA AHN ABOUT VIETNAMESE  
13 PEOPLE AND MEXICAN PEOPLE?

14 A. NO.

15 Q. AND WHY IS THAT?

16 A. BECAUSE I SIGNED A FORM SAYING I WOULD STOP DOING THAT.

17 Q. AND DID SOMEONE ADVISE YOU THAT YOU WERE NOT SUPPOSED TO  
18 DO THAT?

19 A. YES.

20 Q. AND WHO WAS THAT?

21 A. MR. WERNER.

22 Q. DO YOU KNOW IF MS. DANG EVER HEARD YOUR BANTER BETWEEN YOU  
23 AND MAMA AHN?

24 A. NO, I DON'T.

25 Q. I WANT TO GO BACK TO MS. DANG'S TRANSFER TO BECOME A FOOD

1 SERVER. I THINK YOU TALKED ABOUT TWO PEOPLE BECOMING A FOOD  
2 SERVER AND THEY HAD EXPERIENCE. DID THEY HAVE EXPERIENCE AS  
3 CASINO SERVERS?

4 A. YES.

5 Q. AND BOTH OF THEM?

6 A. YES.

7 Q. AND DID MS. DANG HAVE ANY CASINO EXPERIENCE?

8 A. NO.

9 Q. WHEN MS. DANG WAS TRANSFERRED OUT TO BECOME A FOOD SERVER,  
10 WHAT KIND OF TRAINING DID SHE RECEIVE?

11 A. SHE RECEIVED TRAINING AS FAR AS BEGINNING WITH GREETING  
12 CUSTOMERS; HOW TO APPROACH A CASINO TABLE; WHEN THE CUSTOMER IS  
13 IN HAND, NOT TO INTERRUPT THEM; WHILE DELIVERING THE FOOD, NOT  
14 TO INTERRUPT THEM BECAUSE THEY'RE IN A HAND AND IT DISRUPTS  
15 THEIR GAME.

16 SHE RECEIVED MENU TRAINING; SHE RECEIVED INFO GENESIS  
17 TRAINING, WHICH IS THE COMPUTER WE USE TO SEND ORDERS BACK TO  
18 THE KITCHEN OR BACK TO SUTTER'S, WHICH IS OUR SUTTER'S  
19 BAR/RESTAURANT; AND SHE RECEIVED TRAINING AS FAR AS WORKING  
20 WITH -- FOLLOWING, YOU KNOW, TRAINING -- OR FOLLOWING SEVERAL  
21 OTHER EMPLOYEES TO MAKE SURE SHE UNDERSTOOD WHAT WAS EXPECTED  
22 OF HER.

23 Q. AND HOW MUCH TRAINING DID MS. DANG RECEIVE?

24 A. WELL, I WOULD SAY CLOSE TO TWO MONTHS.

25 Q. IS THAT MORE OR LESS THAN OTHER FOOD SERVERS?

1 A. IT'S MORE.

2 Q. AND WHY DID SHE RECEIVE MORE TRAINING THAN OTHER FOOD  
3 SERVERS?

4 A. BECAUSE SHE WOULDN'T FOLLOW THE TRAINEES, THE TRAINERS.

5 Q. WHAT DO YOU MEAN SHE WOULDN'T FOLLOW THE CERTAIN TRAINERS?

6 A. BECAUSE I WOULD HAVE HER FOLLOW CERTAIN TRAINERS FOR THE  
7 WEEK AND SHE WOULD GO AWAY FROM THEM THINKING SHE WOULD KNOW  
8 WHAT SHE WAS DOING AND THEY WOULD COME AND COMPLAIN TO ME AND I  
9 WOULD SAY BE PATIENT AND STAY WITH HER AND SHE NEEDS TO LEARN,  
10 AND I WOULD HAVE CONVERSATIONS WITH HER THAT SHE NEEDS TO STAY  
11 WITH THE TRAINER SO SHE WOULD LEARN.

12 Q. SO DID I HEAR YOU CORRECTLY THAT YOU SAID THAT YOU WOULD  
13 RECEIVE COMPLAINTS FROM HER TRAINERS?

14 A. YES.

15 Q. AND AFTER YOU STOPPED MS. DANG'S FORMAL TRAINING, HOW WAS  
16 HER WORK PERFORMANCE AS A FOOD SERVER? ONCE SHE STARTED  
17 WORKING DURING HER SHIFT AS A FOOD SERVER, HOW WAS HER WORK  
18 PERFORMANCE?

19 A. NOT VERY GOOD.

20 Q. COULD YOU ELABORATE A LITTLE BIT ON THAT?

21 A. WELL, SHE WOULD MAKE MISTAKES AS FAR AS -- SHE DIDN'T KNOW  
22 THE COCKTAILS. SHE DIDN'T KNOW THE DIFFERENT TYPES OF BEERS.  
23 SHE DIDN'T KNOW THE, YOU KNOW, THE MIXES OR ANYTHING LIKE THAT.  
24 SOMEONE WOULD ORDER A CERTAIN KIND OF DRINK AND SHE WOULD MAKE  
25 A MISTAKE ON IT.



1 THE FOOD, SHE DIDN'T UNDERSTAND AS FAR AS TAKING BREAKFAST  
2 ORDERS AND, YOU KNOW, THINGS LIKE THAT. SHE WOULD MAKE A LOT  
3 OF MISTAKES ON THOSE AND WHERE THEY WOULD HAVE TO REMAKE THE  
4 ORDER AND/OR ELSE JUST FIX IT FOR HER AND GET IT OUT TO THE  
5 CUSTOMER BEFORE HE GOT UPSET.

6 Q. AND WHO TOLD YOU ABOUT MS. DANG'S WORK PERFORMANCE  
7 PROBLEMS?

8 A. GEORGE CASTILLO AND KEN MEAKCHAROON.

9 Q. AND DID YOU HEAR ABOUT HER WORK PERFORMANCE IN TERMS OF  
10 BALANCING HER ENVELOPES?

11 A. EXCUSE ME?

12 Q. DID YOU HEAR ABOUT HER WORK PERFORMANCE IN TERMS OF HER  
13 BALANCING HER ENVELOPES?

14 A. YES.

15 Q. AND WHAT DID YOU HEAR?

16 MS. NGUYEN: OBJECTION. HEARSAY, YOUR HONOR.

17 THE COURT: I THINK IT'S TO EXPLAIN WHAT ACTION HE  
18 TOOK OR DIDN'T TAKE. IT CANNOT BE CONSIDERED FOR THE TRUTH OF  
19 WHETHER OR NOT THE COMPLAINT WAS A VALID COMPLAINT OR NOT.

20 MS. MURAKAMI: THANK YOU, YOUR HONOR.

21 Q. YOU CAN ANSWER THE QUESTION.

22 A. COULD YOU REPEAT IT, PLEASE?

23 Q. SURE. WHAT DID YOU HEAR ABOUT HER BALANCING PROBLEMS?

24 A. THAT SHE WAS COMING UP SHORT. SHE WASN'T -- HER  
25 ADDITION -- SHE WOULDN'T ADD UP HER PROPER ACCOUNTABLE SALES TO

1 HER EMPLOYEE MEALS TO -- HER ADDITION WAS WRONG. HER BAG  
2 WOULDN'T BALANCE.

3 Q. WHAT IS HER BAG?

4 A. WE CALL WHAT THEY TURN INTO THE CAGE. IT'S AN ENVELOPE,  
5 BUT WE CALL THEM BAGS. AND SHE WOULD HAVE TO PUT THE AMOUNT OF  
6 \$10 BILLS, \$1 BILLS, NICKELS, QUARTERS, DIMES, ALL OF THAT KIND  
7 OF STUFF AND LIST THEM.

8 Q. AND BESIDES MR. MEAKCHAROON AND MR. CASTILLO, DID ANYONE  
9 ELSE MAKE YOU AWARE OF MS. DANG'S BALANCING PROBLEMS?

10 A. KATE KNAPP.

11 Q. AND WHO IS KATE KNAPP AGAIN?

12 A. COMPLIANCE ANALYST.

13 Q. COULD YOU PLEASE TURN TO EXHIBIT 548?

14 A. IN THIS ONE?

15 MS. MURAKAMI: MAY I APPROACH THE WITNESS?

16 THE COURT: SURE.

17 BY MS. MURAKAMI:

18 Q. ARE YOU AT 548?

19 A. YES.

20 Q. AND DO YOU RECOGNIZE THAT DOCUMENT?

21 A. YES.

22 Q. AND WHAT IS THAT DOCUMENT?

23 A. FROM THE DESK OF KATE KNAPP, COMPLIANCE ANALYST, TO  
24 NICK ORTEGA, THE FOOD AND BEVERAGE DEPARTMENT DIRECTOR, TO ME.

25 Q. AND WHAT IS THE DATE OF THE DOCUMENT?

1 A. JUNE 5TH, 2009.

2 Q. JUNE 8TH, 2009?

3 A. YES.

4 Q. IT'S ALREADY ADMITTED, SO I'M NOT GOING TO GO THROUGH ALL  
5 OF THIS.

6 BUT WHAT IS THIS MEMO GENERALLY ABOUT?

7 A. IT MAKES ME AWARE OF THE MISTAKES SHE IS MAKING AND WHEN  
8 SHE IS MAKING THEM AND FOR ME TO TRY AND GET HER TO COMPLY WITH  
9 THE ANALYST TO MAKE SURE THAT THE FOOD AND BEVERAGE DEPARTMENT  
10 IS ABLE TO BALANCE ON A DAILY BASIS. THAT'S WHAT KATE DOES.

11 MS. MURAKAMI: CINDY, COULD YOU PLEASE PULL UP THE  
12 FIRST BULLET POINT. THE FIRST BULLET POINT.

13 Q. SO THIS SAYS, "THIS SERVER HAS PROBLEM ON A REGULAR BASIS.  
14 THE RECOMMENDATION OF THE COMPLIANCE ANALYST IS THAT THE SERVER  
15 BE MONITORED AT CLOSING AND A SUPERVISOR MUST BE PRESENT. IN  
16 THIS WAY THE SUPERVISOR CAN STOP THE INCORRECT ACTION AND  
17 INSTRUCT THE SERVER IN THE PROPER WAY TO COMPLETE THE CLOSE."

18 DID YOU READ THAT?

19 A. YES.

20 Q. AND IN 2009, JUNE OF 2009, WHO WOULD HAVE BEEN MS. DANG'S  
21 SUPERVISOR AT CLOSING?

22 A. JOSE, MYSELF, AND BETSY.

23 Q. AND DID YOU, IN FACT, FOLLOW MS. KNAPP'S ADVICE HERE AND  
24 START HELPING MS. DANG CLOSE?

25 A. YES.

1 Q. AND DID ANYONE ELSE HELP HER CLOSE?

2 A. I DON'T RECALL.

3 Q. JUST YOU?

4 A. I BELIEVE SO, YES.

5 Q. AND HOW LONG DID THAT LAST, YOUR ASSISTING HER WITH  
6 CLOSING?

7 A. UNTIL THE LAST DAY THAT SHE WORKED.

8 Q. SO FROM THE DATE OF THIS MEMO, JUNE 2009, THROUGH DECEMBER  
9 OF 2009?

10 A. YES.

11 Q. AND WHAT EXACTLY WOULD YOU DO TO HELP HER CLOSE?

12 A. WHEN SHE WOULD COUNT HER MONEY AND MAKE SURE ALL OF HER  
13 RECEIPTS WERE IN ORDER THAT NEEDED TO BE SENT TO THE CAGE; MAKE  
14 SURE SHE HAD ALL OF HER ENVELOPES FILLED OUT CORRECTLY; IF SHE  
15 HAD A 20, A 10, A DOLLAR, \$5, YOU KNOW, MAKE SURE EVERYTHING  
16 WAS WRITTEN DOWN IN THE ORDER THAT IT WAS SUPPOSED TO BE; AND  
17 THEN WE WOULD DO OUR COUNTING OF CASH AND MAKE SURE SHE HAD HER  
18 EMPLOYEE MEAL IN THERE AND EVERYTHING BALANCED OUT TO THE MONEY  
19 THAT SHE HAD INSIDE.

20 Q. AND DID YOU DO THIS WITH HER AFTER EVERY SHIFT?

21 A. YES.

22 Q. AND DID YOU HAVE TO HELP ANY OTHER FOOD SERVER CLOSE?

23 A. NO.

24 Q. COULD YOU PLEASE TURN TO THE NEXT TAB 549.

25 CINDY, IF YOU COULD PUT THAT UP. IT'S ALREADY IN

1 EVIDENCE. CAN YOU MAKE IT ANY BIGGER?

2 THANKS.

3 DO YOU RECOGNIZE THIS DOCUMENT?

4 A. YES.

5 Q. AND WHAT IS THIS DOCUMENT?

6 A. THIS IS WHEN SHE WAS -- THIS IS FROM THE DESK OF  
7 KATE KNAPP, AND SHE'S THE COMPLIANCE ANALYST, SEPTEMBER 14TH,  
8 2009.

9 Q. AND DO YOU REMEMBER RECEIVING THIS?

10 A. YES, YES.

11 Q. OKAY. ACTUALLY, CAN WE GET THE WHOLE.

12 SO DO YOU SEE THE NOTE ON THE BOTTOM?

13 A. YES.

14 Q. AND IT SAYS, "SPOKE WITH SERVER. SHE WILL BE MORE CAREFUL  
15 IN THE FUTURE, AND I TOLD HER IF SHE WANTS, SHE CAN USE ADDING  
16 MACHINE."

17 WHO SIGNED THAT?

18 A. BETSY.

19 Q. SO DID SHE SPEAK WITH MS. DANG?

20 A. SHE ASSISTED HER WHEN JOSE WASN'T THERE.

21 Q. SO MS. COCHRAN ALSO ASSISTED MS. DANG IF MS. --

22 A. YES.

23 Q. SO MS. COCHRAN WOULD ALSO HELP HER WHEN YOU WERE NOT  
24 AROUND; IS THAT RIGHT?

25 A. SHE WOULD ASSIST HER AND CLOSE OUT HER BANK BECAUSE I WAS

1 OFF DOING OTHER THINGS.

2 Q. SO DID YOU RECEIVE THIS MEMO AND THEN MS. COCHRAN SPOKE  
3 WITH MS. DANG ABOUT IT?

4 A. YES. I SPOKE WITH HER AND WE PUT AN ADDITION MACHINE OVER  
5 THERE TO HELP HER WITH HER ADDITION.

6 Q. AND SO YOU SPOKE WITH MS. DANG ABOUT THIS MEMO?

7 A. YES.

8 Q. AND HAD SUPERVISORS BEEN HELPING MS. DANG CLOSE AT THIS  
9 POINT?

10 A. YES.

11 Q. SO WHY WOULD THERE STILL BE MISTAKES IF THE SUPERVISORS  
12 ARE HELPING HER?

13 A. WHY?

14 Q. YEAH.

15 A. I DON'T RECALL.

16 Q. OKAY. AND DID YOU HAVE THESE MEMOS IN MIND WHEN YOU WROTE  
17 UP THIS COUNSELLING MEMO IN OCTOBER OF 2009?

18 A. YES.

19 Q. COULD YOU PLEASE TURN TO EXHIBIT 551? DO YOU RECOGNIZE  
20 THIS EXHIBIT?

21 A. YES.

22 Q. AND WHAT IS THIS DOCUMENT?

23 A. THIS IS INFORMING ME THAT THEY WERE USING A REFUND KEY  
24 INSTEAD OF USING -- GOING TO THE PROPER VOID PROCEDURE, WHICH  
25 IS A CASINO MANAGER SIGNING AND A LEAD SUPERVISOR SIGNING.

1 Q. AND WHO IS "THEY"?

2 A. FOOD SERVERS.

3 Q. FOOD SERVERS?

4 A. YES.

5 Q. AND THERE ARE SEVERAL ATTACHED DOCUMENTS. COULD YOU  
6 PLEASE LOOK THROUGH THOSE?

7 A. OKAY.

8 Q. SO IS THIS MEMO ABOUT A PARTICULAR EMPLOYEE?

9 A. YES.

10 Q. AND WHICH EMPLOYEE IS THAT?

11 A. CUC DANG.

12 MS. MURAKAMI: YOUR HONOR, I OFFER EXHIBIT 551.

13 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

14 THE COURT: 551 IS ADMITTED.

15 MS. MURAKAMI: THANK YOU.

16 (DEFENDANT'S EXHIBIT 551 WAS RECEIVED IN EVIDENCE.)

17 MS. MURAKAMI: CINDY, COULD YOU PLEASE PUT THAT UP.

18 Q. SO COULD YOU PLEASE REPEAT AGAIN YOUR TESTIMONY REGARDING  
19 WHAT A VOID IS VERSUS A REFUND.

20 A. ON THE AGYLIS MACHINE THERE'S A REFUND THAT IS NOT  
21 SUPPOSED TO BE USED AND WE DISABLED IT AFTER A WHILE, BUT IT  
22 WAS BEING USED BY SERVERS AND CUC DANG AND IT TAKES ITEMS AWAY  
23 FROM THE CHECK WITHOUT HAVING A SIGNATURE FROM THE CASINO SHIFT  
24 MANAGER AND THE LEAD SUPERVISOR, LEAD COOK, AND THAT IS NOT THE  
25 PROPER PROCEDURE.

1 THE PROPER PROCEDURE IS THE CASINO SHIFT MANAGER, LEAD  
2 SUPERVISOR, AND THEN IT'S VOIDED WHEN THE FOOD COMES BACK AND  
3 HE OBSERVES THE FOOD TO BE VOIDED.

4 Q. AND DID YOU SPEAK WITH MS. DANG AFTER YOU RECEIVED THIS  
5 MEMO?

6 A. YES.

7 Q. AND WHEN DID YOU SPEAK WITH HER?

8 A. WHEN I RECEIVED THE MEMO.

9 Q. OKAY. DO YOU REMEMBER WHAT YOU SPOKE ABOUT WITH HER?

10 A. LETTING -- INFORMING HER NOT TO USE THE REFUND KEY AND YOU  
11 SHOULD USE THE PROPER PROCEDURES FOR THE VOIDS.

12 WE EVEN PUT SIGNS UP FOR THEM.

13 Q. OKAY. AND HOW DID SHE RESPOND?

14 A. I DON'T RECALL.

15 Q. OKAY. COULD YOU PLEASE TURN TO EXHIBIT 14. IT MIGHT BE  
16 IN A DIFFERENT BINDER.

17 SO IS THIS A MEMO FROM MS. COCHRAN?

18 A. YES.

19 Q. AND I BELIEVE PLAINTIFF'S COUNSEL JUST ASKED YOU A COUPLE  
20 OF QUESTIONS ABOUT IT.

21 DID YOU ASK MS. COCHRAN TO WRITE YOU THIS MEMO?

22 A. YES.

23 Q. AND WHY DID YOU ASK HER TO WRITE YOU THE MEMO?

24 A. FOR THE UNION.

25 Q. AND WHAT DO YOU MEAN BY THAT?



1 A. WELL, IN CASE THERE WERE ARBITRATIONS AND THINGS LIKE  
2 THAT, WE ALWAYS KEEP MEMOS OF THINGS THAT WE HAVE HAD  
3 CONVERSATIONS WITH OTHER EMPLOYEES.

4 Q. OKAY. DID YOU ASK MS. COCHRAN TO WRITE THIS MEMO IN ORDER  
5 TO INTERFERE WITH BAY 101'S INVESTIGATION?

6 A. NO.

7 Q. AND DID YOU TELL MS. COCHRAN WHAT TO WRITE?

8 A. NO.

9 Q. COULD YOU PLEASE TURN TO THE NEXT ONE, EXHIBIT 15.  
10 IS THAT THE NOVEMBER 10TH, 2009, MEMO FROM JOSE SOLIS?

11 A. YES.

12 Q. AND I BELIEVE PLAINTIFF'S COUNSEL ALSO ASKED YOU ABOUT  
13 THIS MEMO AS WELL.

14 DID YOU ASK MR. SOLIS TO DRAFT THIS STATEMENT?

15 A. OF THE CONVERSATIONS, YES.

16 Q. OKAY. AND WHY DID YOU ASK HIM TO DO THAT?

17 A. FOR THE UNION.

18 Q. AND "FOR THE UNION," THAT MEANS --

19 A. IF THERE WAS ANY DISCREPANCY, ARBITRATIONS.

20 Q. SO YOU'RE JUST MAKING A RECORD?

21 A. YES.

22 Q. AND DID YOU SOLICIT THIS REPORT FOR HIM TO INTERFERE WITH  
23 BAY 101'S INVESTIGATION?

24 A. NO.

25 Q. COULD YOU PLEASE GET THE BINDER WITH THE 500'S AND TURN TO

1 503.

2 DO YOU RECOGNIZE THIS DOCUMENT?

3 A. YES.

4 Q. AND WHAT IS THIS DOCUMENT?

5 A. THIS DOCUMENT IS A DECEMBER 5TH, 2009. IT HAS TO DO WITH  
6 THE SITUATION THAT CUC DANG HAD TRIED TO BUY -- NOT TRIED TO  
7 BUY.

8 SHE ORDERED A DRINK THROUGH THE AGYLIS, A-G-Y, WILD GUESS,  
9 L-I-S, THE AGYLIS MACHINE, SENDING A TICKET ORDERING A GLASS OF  
10 RED WINE, WHICH WAS AFTER THE HOURS THAT WE ALLOW SERVERS TO  
11 BUY DRINKS FOR THE CASINO FLOOR.

12 AND SHE WENT TO COLLECT AND THE SERVER, BARTENDER, TOLD  
13 HER THAT IT'S TOO LATE TO BE ABLE TO GET A DRINK AND SHE -- SO  
14 SHE REFUSED HER BECAUSE SHE DIDN'T WANT TO BE WRITTEN UP FOR  
15 SELLING LIQUOR AFTER THE ALLOTTED TIME.

16 SO SHE WENT TO JESSE DOMINGO, WHO IS A PORTER, AND GAVE  
17 HER THE RECEIPT AND THE \$20 BILL AND TOLD HER TO GO AROUND AND  
18 INTO SUTTER'S, WHICH YOU COULD STILL BUY A DRINK IF YOU DRANK  
19 IT INSIDE OF SUTTER'S, TO GET A GLASS OF WINE FOR HER FOR THE  
20 CUSTOMER ON THE CASINO FLOOR, WHICH OUR PORTERS ARE NOT ALLOWED  
21 TO SERVE ALCOHOL.

22 AND SO SHE WENT IN THERE AND BETH LICONA THAT TOLD HER  
23 THAT SHE COULD NOT BE GETTING DRINKS FOR OTHER -- FOR THE  
24 SERVERS BECAUSE SHE SAW THE TICKET WAS FOR CUC.

25 SO SHE GOT REALLY SCARED BECAUSE BETH TOLD HER SHE WAS

1 GOING TO GET IN TROUBLE, YOU CAN'T BE DOING THAT.

2 Q. AND LET ME CUT YOU OFF. WHO IS "SHE"?

3 A. BETH LICONA.

4 Q. COULD YOU PLEASE USE THEIR FIRST NAMES BECAUSE THERE ARE  
5 TOO MANY "SHE'S" AND "HERS"?

6 A. OKAY. LILIBETH TOLD JESSICA DOMINGO NOT TO BE DOING THIS  
7 BECAUSE JESSE COULD GET HERSELF IN TROUBLE, AND SO SHE WENT  
8 BACK -- AND SO JESSICA WENT BACK AND GAVE CUC HER MONEY AND SHE  
9 WAS UPSET BECAUSE JESSICA THOUGHT SHE WAS GOING TO BE IN  
10 TROUBLE.

11 Q. SO WHAT IS THE PURPOSE OF THIS DOCUMENT?

12 A. THE PURPOSE OF IT IS THAT BECAUSE SHE WAS PROTECTING  
13 HERSELF. SHE WANTED TO KNOW IF SHE WAS GOING TO BE FIRED OR  
14 TERMINATED OR ANYTHING BECAUSE WHAT SHE WAS TRYING TO DO AND  
15 SHE WASN'T.

16 MR. MCMANIS: "SHE" IS JESSICA?

17 THE WITNESS: JESSICA. I'M SORRY.

18 MS. MURAKAMI: YOUR HONOR, I OFFER EXHIBIT 503.

19 MS. NGUYEN: YOUR HONOR, WE WOULD OBJECT AS HEARSAY.

20 AND I DON'T KNOW IF MS. DOMINGO WILL BE COMING IN, BUT I  
21 THINK IT'S HEARSAY.

22 THE COURT: WELL, IT DEPENDS WHAT IT IS OFFERED FOR.

23 IF IT'S OFFERED FOR ONE OF THE DOCUMENTS ON WHICH  
24 MR. WERNER MADE HIS DECISION, THEN IT CAN BE CONSIDERED AS TO  
25 WHETHER IT'S -- IN WHAT WAY IT AFFECTED HIS DECISION, IF IT

1 DID.

2 IT CANNOT BE CONSIDERED FOR THE TRUTH OF WHAT IS RELATED  
3 IN THE DOCUMENT BECAUSE THAT WOULD HAVE TO COME FROM A WITNESS  
4 WHO SAW WHAT OCCURRED.

5 MS. NGUYEN: YOUR HONOR, MR. WERNER IS NOT ON THE  
6 STAND.

7 THE COURT: IT DOESN'T MATTER.

8 MS. MURAKAMI: YOUR HONOR, IT'S NOT BEING OFFERED  
9 FOR THE TRUTH.

10 THE COURT: I UNDERSTAND THAT.

11 I'LL ALLOW IT TO COME IN FOR SHOWING THE ACTION WAS TAKEN,  
12 AND IF THE JURY FINDS THAT MR. WERNER CONSIDERED THIS DOCUMENT  
13 IN MAKING HIS DECISION, THEY CAN CONSIDER IT FOR THE PURPOSES  
14 OF IT TO BE CONSIDERED.

15 BUT IT'S NOT EVIDENCE OF WHAT IS RELATED IN THE MEMO.

16 MS. MURAKAMI: THANK YOU, YOUR HONOR.

17 (DEFENDANT'S EXHIBIT 503 WAS RECEIVED IN EVIDENCE.)

18 MS. MURAKAMI: CINDY, COULD I GET THAT ON THE  
19 SCREEN.

20 Q. IS THAT JESSICA'S SIGNATURE ON THE BOTTOM?

21 A. YES.

22 Q. AND SO DID YOU SPEAK WITH MS. DOMINGO ABOUT THIS INCIDENT  
23 BEFORE YOU WROTE THE STATEMENT?

24 A. SHE CAME TO ME.

25 Q. SHE CAME TO YOU?

1 A. YES.

2 Q. AND DID YOU TELL HER WHAT TO WRITE?

3 A. NO.

4 Q. AND DID YOU SPEAK WITH MS. DANG ABOUT THIS INCIDENT?

5 A. YES.

6 Q. AND WHAT DID MS. DANG SAY ABOUT THE INCIDENT?

7 A. I DON'T RECALL WHAT SHE SAID.

8 Q. WAS MS. DANG DISCIPLINED FOR THIS INCIDENT?

9 A. DISCIPLINED?

10 Q. DID YOU GIVE HER A WARNING OR WAS SHE SUSPENDED?

11 A. NO.

12 Q. LET'S MOVE ON. COULD YOU PLEASE TURN TO 504. IT'S THE  
13 NEXT ONE.

14 DO YOU RECOGNIZE THAT DOCUMENT?

15 A. YES.

16 Q. AND WHAT IS THAT DOCUMENT?

17 A. LILIBETH'S DECEMBER 17TH, 2009, NICK ORTEGA, DIRECTOR F&B,  
18 BAY 101.

19 Q. OKAY.

20 MS. MURAKAMI: CINDY, COULD WE GET THIS UP THERE?  
21 IT'S ALREADY IN EVIDENCE.

22 Q. AND WHAT IS THIS STATEMENT GENERALLY ABOUT?

23 A. SHE WROTE UP A VIRGIN MARGARITA, CUC DANG, AND DECIDED SHE  
24 MADE A MISTAKE ON THAT. I BELIEVE THAT'S WHAT IT WAS.

25 AND SHE CAME -- AND SHE SAID SHE WANTED A REGULAR

1 MARGARITA, AND LILIBETH KNOWS THAT WE NEED TO VOID THE VIRGIN  
2 MARGARITA IN ORDER TO BE ABLE TO RECEIVE ANOTHER DRINK OF A  
3 DIFFERENT KIND.

4 Q. AND DID MS. LICONA SPEAK TO YOU ABOUT THIS INCIDENT?

5 A. YES, SHE DID. SHE LEFT ME A MESSAGE ON THE PHONE.

6 Q. AND SO DID YOU FOLLOW UP WITH HER AFTER YOU GOT THAT  
7 MESSAGE?

8 A. YES.

9 Q. OKAY. AND DOES THIS DOCUMENT ACCURATELY REFLECT WHAT  
10 MS. LICONA TOLD YOU?

11 A. YES.

12 Q. AND WHAT IS THE PURPOSE OF THIS DOCUMENT?

13 A. FOR THE UNION.

14 Q. DID YOU TELL MS. LICONA WHAT TO WRITE?

15 A. NO.

16 Q. AND WAS MS. DANG DISCIPLINED IN RELATIONSHIP TO THIS  
17 INCIDENT?

18 A. I SPOKE WITH HER.

19 Q. AND DID SHE RECEIVE A COUNSELLING MEMO?

20 A. NOT THAT I RECALL.

21 Q. AND WHAT WAS MS. DANG'S RESPONSE WHEN YOU SPOKE TO HER  
22 ABOUT THIS INCIDENT?

23 A. DENIED WHAT HAD HAPPENED AND GOT UPSET AND BLAMED  
24 LILIBETH LICONA AND SAID SHE WAS AT FAULT.

25 Q. I HAVE A FEW QUESTIONS ABOUT THE OCTOBER 2009 INCIDENT

1 BETWEEN MS. ELIAS AND MS. DANG.

2 THE COURT: WHY DON'T WE TAKE A BREAK AT THIS TIME  
3 SINCE YOU'RE SWITCHING?

4 MS. MURAKAMI: OKAY. WE'LL BE IN RECESS FOR  
5 15 MINUTES.

6 (RECESS FROM 12:12 P.M. UNTIL 12:29 P.M.)

7 THE COURT: ALL RIGHT. YOU MAY CONTINUE.

8 MS. MURAKAMI: CINDY, COULD WE START WITH 534,  
9 ALREADY IN EVIDENCE.

10 Q. SO GOING BACK TO THE OCTOBER 4TH, 2009, INCIDENT -- IT'S  
11 OKAY, MR. ORTEGA. YOU CAN JUST LOOK AT IT ON THE SCREEN.

12 A. OKAY.

13 Q. YEAH. DO YOU RECOGNIZE THIS DIAGRAM?

14 A. YES.

15 Q. NOW, WHERE ON THIS DIAGRAM IS THE AREA WHERE MS. DANG AND  
16 MS. ELIAS HAD THEIR INCIDENT IN OCTOBER OF 2009?

17 A. ON THE POKER SIDE.

18 Q. ON THE POKER SIDE TO THE RIGHT (INDICATING)?

19 A. YES, TO THE RIGHT.

20 Q. OKAY. AND WHERE IS THE KITCHEN?

21 A. ALL OF THE WAY TO THE BACK OF THE BUILDING.

22 Q. SO ARE THERE DOORS BETWEEN THE POKER AREA AND THE KITCHEN?

23 A. YES, THERE ARE AUTOMATIC DOORS THERE.

24 Q. AND WHAT IS MR. MEAKCHAROON'S POSITION AGAIN?

25 A. HE'S THE LEAD COOK.

1 Q. SO DOES HE WORK IN THE KITCHEN?

2 A. YES.

3 Q. AND DOES HE EVER COME OUT ON THE FLOOR?

4 A. YES.

5 Q. AND HE COMES OUT ONTO THE CASINO FLOOR AT TIMES?

6 A. YES, HE CAN.

7 Q. HE CAN. OKAY.

8 IF PEOPLE WERE ARGUING ON THE POKER ROOM FLOOR, WOULD  
9 ANYBODY IN THE KITCHEN BE ABLE TO HEAR THAT?

10 A. NO.

11 Q. SO I THINK YOU TESTIFIED THAT YOU GOT STATEMENTS FROM  
12 LINDA ELIAS, ARLENE FONTILLAS, AND KEN MEAKCHAROON; IS THAT  
13 RIGHT?

14 A. YES.

15 Q. AND YOU REQUESTED THAT THEY MAKE STATEMENTS?

16 A. YES.

17 Q. AND DID YOU TELL THEM WHAT TO WRITE IN THEIR STATEMENTS?

18 A. NO.

19 Q. AND DID YOU REVIEW THOSE STATEMENTS BEFORE MAKING THE  
20 DECISION TO SUSPEND MS. DANG?

21 A. I DON'T RECALL.

22 Q. DID YOU REVIEW THE SURVEILLANCE VIDEO BEFORE MAKING THE  
23 DECISION TO SUSPEND MS. DANG?

24 A. YES.

25 Q. SO I WANT TO GO TO THE MEETING WHERE YOU INFORMED MS. DANG



1 ABOUT HER SUSPENSION AS A RESULT OF THE OCTOBER INCIDENT.

2 DID YOU GIVE MS. DANG THE OPPORTUNITY TO TELL HER SIDE OF  
3 THE STORY?

4 A. YES.

5 Q. DID MS. DANG REQUEST A UNION REPRESENTATIVE FOR THIS  
6 MEETING?

7 A. NO.

8 Q. I WANT TO GO TO EXHIBIT 1001, BAY 1331?

9 MR. MCMANIS: WHAT WAS THAT AGAIN, PLEASE?

10 MS. MURAKAMI: EXHIBIT 1001, BATE STAMP 1331.

11 MR. MCMANIS: THANK YOU.

12 BY MS. MURAKAMI:

13 Q. AND DO YOU RECOGNIZE THIS COUNSELLING MEMO?

14 OH, SURE, GO AHEAD AND YOU CAN LOOK AT IT IN THE BINDER.

15 A. 1001?

16 Q. 1001. AND THE STAMP AT THE BOTTOM IS BAY 1331?

17 A. 1331?

18 Q. YES.

19 DO YOU RECOGNIZE THAT MEMO?

20 A. YES.

21 Q. DO YOU REMEMBER GIVING THIS MEMO TO MS. DANG AT THIS  
22 MEETING REGARDING HER SUSPENSION?

23 A. YES.

24 Q. AND WAS THERE AN ISSUE BETWEEN MS. ELIAS AND MS. DANG ON  
25 OCTOBER 4TH THAT RELATED TO BALANCING ENVELOPES?

1 A. COULD YOU REPEAT THE QUESTION?

2 Q. SO THE INCIDENT FOR WHICH MS. DANG WAS BEING SUSPENDED,  
3 THE OCTOBER 4TH INCIDENT, DID THAT INVOLVE BALANCING ENVELOPES?

4 A. NO.

5 Q. AND SO WHY WOULD MS. DANG RECEIVE A COUNSELLING MEMO ABOUT  
6 HER ENVELOPES AT THIS MEETING?

7 A. SHE WAS HAVING TROUBLE STILL TOWARDS THE END.

8 Q. AND AT THIS POINT -- AT THIS TIME WAS MS. DANG STILL  
9 RECEIVING ASSISTANCE WITH HER ENVELOPES?

10 A. YES.

11 Q. AND DID YOU VIEW HER BALANCING ENVELOPES AS A CONTINUING  
12 PROBLEM?

13 A. YES.

14 Q. NOW, GOING -- DID YOU OR MS. GILBERT TELL MS. DANG TO SHUT  
15 UP DURING THIS MEETING?

16 A. NO.

17 Q. AND DID YOU TELL MS. DANG DURING THIS MEETING THAT YOU  
18 WOULD SEND HER BACK TO THE KITCHEN?

19 A. THAT I WOULD SEND HER BACK? NO.

20 Q. DID YOU MENTION TO HER IN ANY WAY THAT SHE MIGHT HAVE TO  
21 GO BACK TO THE KITCHEN TO WORK?

22 A. YES.

23 Q. AND WHAT DID YOU SAY EXACTLY?

24 A. I SAID THAT IF IT CONTINUES, YOU KNOW, WE WOULD OFFER HER  
25 A JOB IN THE KITCHEN BECAUSE SHE -- YOU KNOW, BECAUSE OF THE

1 PERFORMANCE SHE WAS HAVING -- THE PERFORMANCE ISSUES SHE WAS  
2 HAVING ON THE FLOOR.

3 Q. DO YOU RECALL THAT BAY 101 PERFORMED AN INVESTIGATION  
4 FOLLOWING THE OCTOBER 2009 INCIDENT?

5 A. YES.

6 Q. AND DO YOU KNOW THE PURPOSE OF THAT INVESTIGATION?

7 A. IT WAS TO INVESTIGATE ACCUSATIONS THAT WERE MADE TOWARDS  
8 ME.

9 Q. AND I THINK YOU TESTIFIED THAT YOU HELPED WITH SOME  
10 SCHEDULING --

11 A. YES.

12 Q. -- OF EMPLOYEE INTERVIEWS.

13 A. YES.

14 Q. AND WHAT DID YOU TELL PEOPLE WHEN YOU TOLD THEM THAT THEY  
15 HAD TO GO TO THE INTERVIEW WITH THE INVESTIGATOR?

16 A. I TOLD THEM THAT THEY HAD TO GO UP TO THE ELEVATOR TO THE  
17 ACCOUNTING ROOM AND BE THERE AT A CERTAIN TIME.

18 Q. AND DID YOU TELL THEM WHAT THE INVESTIGATION WAS ABOUT?

19 A. NO.

20 Q. AND DID YOU DISCUSS THE INVESTIGATION WITH THESE EMPLOYEES  
21 IN ANY WAY?

22 A. NO.

23 Q. IS THERE ANYONE ELSE WHO WOULD HAVE TOLD THE EMPLOYEES TO  
24 MEET WITH THE INVESTIGATOR?

25 A. NO.

1 Q. AND WHY IS THAT?

2 A. I DO THE SCHEDULING AND OTHER EMPLOYEES, THEY JUST DON'T  
3 UNDERSTAND -- THAT'S JUST NOT WHAT THEY DO.

4 Q. AND DO YOU REMEMBER BEING INTERVIEWED BY THE INVESTIGATOR?

5 A. YES.

6 Q. AND WHAT DID THE INVESTIGATOR ASK YOU ABOUT?

7 A. SEXUAL HARASSMENT QUESTIONS, DISCRIMINATION QUESTIONS, IF  
8 I HAVE EVER BANTERED WITH NGA NGUYEN.

9 Q. AND WERE YOU EVER ASKED TO MEET WITH THAT INVESTIGATOR?

10 A. YES.

11 Q. AND WHO WAS THAT?

12 A. JENNIFER GILBERT.

13 Q. AND DID SHE TELL YOU WHAT TO SAY TO THE INVESTIGATOR?

14 A. NO.

15 Q. AND DID THE INVESTIGATOR TRY TO GET YOU TO ANSWER ONE WAY  
16 OR ANOTHER?

17 A. NO.

18 Q. I THINK YOU TESTIFIED THAT YOU HAD TO DO SOME SUPERVISOR  
19 TRAINING --

20 A. YES.

21 Q. -- AS A RESULT OF THE INVESTIGATION?

22 A. YES.

23 Q. AND HOW LONG WAS THAT TRAINING?

24 A. EIGHT HOURS.

25 Q. TOTAL?

1 A. TOTAL, YES.

2 Q. AND WAS THAT IN A CLASS OR WAS IT WITH ONE PERSON?

3 A. ONE ON ONE.

4 Q. NOW, I WANT TO TALK ABOUT DECEMBER 21ST, 2009.

5 WHAT TIME DID YOU GET INTO WORK THAT DAY?

6 A. APPROXIMATELY 3:00, 3:30.

7 Q. AND IS THAT DIFFERENT FROM THE TIME THAT YOU WOULD  
8 NORMALLY COME IN?

9 A. YES.

10 Q. AND IS IT EARLIER OR LATER?

11 A. EARLIER.

12 Q. AND WHAT TIME DO YOU USUALLY COME INTO WORK?

13 A. 4:30, 5:00.

14 Q. NOW, AFTER YOU TOLD MS. DANG ABOUT THIS MEETING IN H.R.,  
15 DID SHE SAY ANYTHING TO YOU ABOUT HER DAUGHTER?

16 A. NO.

17 Q. DID SHE SAY ANYTHING TO YOU ABOUT HER HUSBAND?

18 A. NO.

19 Q. DID YOU TRY TO MOVE THE MEETING EARLIER?

20 A. YES.

21 Q. WERE YOU ABLE TO MOVE THE MEETING EARLIER? WERE YOU ABLE  
22 TO MOVE THE MEETING UP EARLIER?

23 A. YES, I WAS -- I MEAN, I DON'T UNDERSTAND THE QUESTION.

24 Q. DID YOU TRY TO MOVE THE MEETING TO AN EARLIER TIME AFTER  
25 MS. DANG SAID SHE WASN'T GOING TO THE MEETING?

1 A. I WAS GOING TO, YES, I WAS GOING TO GET AHOLD OF JENNIFER  
2 AND VINCE.

3 Q. SO YOU WERE GOING TO TRY?

4 A. YES.

5 Q. AND DID SOMETHING INTERRUPT THAT?

6 A. I RECEIVED A PHONE CALL FROM SOMEBODY CLAIMING TO BE HER  
7 HUSBAND.

8 Q. CLAIMING TO BE MS. DANG'S HUSBAND?

9 A. YES.

10 Q. AND WHAT DID MS. DANG'S HUSBAND SAY TO YOU?

11 A. HE WAS ASKING ME QUESTION AS FAR AS, YOU KNOW, WHO  
12 AUTHORIZED THIS MEETING AND I SAID MR. RON WERNER, AND HE SAID,  
13 "WELL, SHE'S NOT ATTENDING ANY MEETING WITHOUT ME."

14 I SAID, "SHE'S A BAY 101 EMPLOYEE AND WE NEED TO SPEAK TO  
15 HER."

16 AND HE SAID, "WELL, SHE'S NOT GOING TO BE AT ANY MEETING  
17 WITHOUT ME AND I'LL BE CONTACTING A LAWYER."

18 AND HE GAVE ME HIS PHONE NUMBER AND TELLING ME "RON WERNER  
19 CAN CONTACT ME IF NEED BE."

20 Q. AND DID HE REFUSE ON HER BEHALF?

21 A. I ASKED HIM THAT QUESTION, IF HE WAS REFUSING ON HER  
22 BEHALF, AND HE SAID YES.

23 Q. OKAY. AND WHAT DID YOU DO AFTER GETTING OFF THE PHONE  
24 WITH MS. DANG'S HUSBAND?

25 A. I WENT AND CALLED VINCE SHAW AND JENNIFER GILBERT.

1 Q. OKAY. DID YOU TALK TO MS. DANG AGAIN THAT MORNING?

2 A. YES.

3 Q. AND WHAT DID YOU TALK TO HER ABOUT?

4 A. SHE ASKED ME IF SHE COULD HAVE AN EARLY OUT.

5 Q. AND SO THIS REQUEST TO HAVE AN EARLY OUT, WAS THAT AFTER  
6 YOU HAD SPOKEN WITH HER HUSBAND ON THE PHONE?

7 A. YES.

8 Q. AND DID SHE TELL YOU WHY SHE WANTED TO GO HOME EARLY?

9 A. SHE WAS TIRED.

10 Q. AND WHAT DID YOU SAY IN RESPONSE?

11 A. YES.

12 Q. YES, SHE COULD GO LEAVE EARLY?

13 A. YES, SHE COULD GO.

14 Q. AND IS IT YOUR NORMAL PRACTICE TO DEAL WITH EMPLOYEE'S  
15 SPOUSES?

16 A. NO.

17 Q. HAVE YOU EVER ASKED MR. WERNER TO CALL AN EMPLOYEE'S  
18 SPOUSE?

19 A. NO.

20 Q. COULD YOU PLEASE TURN TO EXHIBIT 1003.

21 DO YOU RECOGNIZE THAT DOCUMENT?

22 A. YES.

23 Q. AND WHAT IS THAT DOCUMENT?

24 A. THE DOCUMENT IS WHAT I -- IS WHAT CONVERSATION I HAD WITH  
25 HER, WITH CUC DANG, AND THE CONVERSATION I HAD OVER THE PHONE

1 WITH HER -- WITH A MAN SAYING IT WAS HER HUSBAND.

2 Q. AND DID YOU PREPARE THIS DOCUMENT?

3 A. I DID, YES.

4 Q. AND DID YOU GIVE THIS DOCUMENT TO ANYBODY?

5 A. I GAVE THIS DOCUMENT TO HUMAN RESOURCES.

6 Q. TO HUMAN RESOURCES?

7 A. YES.

8 Q. OKAY.

9 MS. MURAKAMI: YOUR HONOR, I OFFER EXHIBIT 1003.

10 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

11 THE COURT: 1003 IS ADMITTED THANK YOU.

12 (DEFENDANT'S EXHIBIT 1003 WAS RECEIVED IN EVIDENCE.)

13 MS. MURAKAMI: CINDY, COULD WE HAVE IT UP?

14 Q. SO THE TOP OF THIS SAYS JANUARY 7TH, 2010. IS THAT WHEN  
15 YOU WROTE THIS DOCUMENT?

16 A. NO.

17 Q. AND WHEN DID YOU MAKE -- WHEN DID YOU PREPARE YOUR  
18 DOCUMENT?

19 A. SHORTLY AFTER I HAD THE CONVERSATION WITH JENNIFER AND  
20 VINCE SHAW.

21 Q. WAS THAT A TYPEWRITTEN DOCUMENT OR A HANDWRITTEN DOCUMENT?

22 A. HANDWRITTEN.

23 Q. SO YOU ORIGINALLY HAD A HANDWRITTEN DOCUMENT?

24 A. YES.

25 Q. AND WHO TYPED THIS?



1 A. BETSY COCHRAN.

2 Q. AND WHO WAS THAT?

3 A. SHE'S IN A MANAGEMENT POSITION. SHE DOES PURCHASING  
4 AND --

5 Q. SO MS. COCHRAN TYPED UP THE DOCUMENT WITH THE DATE THAT  
6 SHE TYPED IT OR THE DATE THAT THE PERSON WROTE THE STATEMENT?

7 A. SHE TYPES IT WITH THE DATE THAT SHE TYPES IT. SHE PUTS A  
8 DATE ON IT THAT SHE TYPED IT.

9 Q. OKAY. SO YOU WROTE THIS ON DECEMBER 21ST, BUT SHE TYPED  
10 IT ON JANUARY 7TH?

11 A. YES.

12 Q. OKAY. AND DOES THIS STATEMENT ACCURATELY REFLECT WHAT  
13 HAPPENED THAT DAY?

14 A. YES.

15 Q. THANK YOU. THAT'S ALL.

16 THE COURT: OKAY. MS. NGUYEN, ANYTHING FURTHER?

17 MS. NGUYEN: THANK YOU, YOUR HONOR.

18 **AS-ON RECROSS-EXAMINATION**

19 BY MS. NGUYEN:

20 Q. MR. ORTEGA, I'D LIKE YOU TO TAKE A LOOK AT EXHIBIT 550,  
21 PLEASE.

22 MR. MCMANIS: WHAT WAS THAT NUMBER AGAIN?

23 MS. NGUYEN: 550.

24 Q. HAVE YOU FOUND IT?

25 A. YES.

1 Q. AND THIS IS ANOTHER MEMO FROM MS. KNAPP, CORRECT?

2 A. IT IS.

3 Q. AND DO YOU SEE IT THERE THAT MS. KNAPP WROTE, "MY  
4 DOCUMENTATION OF THE ERRORS FOR MS. DANG IS ABOUT THE SAME FOR  
5 ANY OTHER SERVER."

6 DO YOU SEE THAT?

7 A. YES.

8 Q. AND TOWARD THE BOTTOM, THE VERY LAST PARAGRAPH, SHE NOTED  
9 THAT "THIS SERVER HAS THE POTENTIAL TO BE VERY GOOD AT HER  
10 JOB."

11 DO YOU SEE THAT?

12 A. YES.

13 Q. "AND THAT SHE ONLY NEEDS TO BE ABLE TO ASK FOR HELP AND  
14 NOT TO FEEL AS IF SHE IS SINGLED OUT."

15 DO YOU SEE THAT?

16 A. YES.

17 Q. AND I'D LIKE FOR YOU TO TURN A FEW PAGES TO -- IT'S THE  
18 DOCUMENT BATES STAMPED BAY 1535.

19 DO YOU HAVE THAT IN FRONT OF YOU NOW, MR. ORTEGA?

20 A. 1535?

21 Q. YES.

22 A. YES.

23 Q. AND DO YOU SEE TOWARD THE BOTTOM MS. DANG'S NAME?

24 A. YES.

25 Q. AND THAT SHE IS SHORT \$20.60?

1 A. YES.

2 Q. AND ON THAT PAGE ANOTHER SERVER BY THE NAME OF  
3 AMY SARDCHIEN, S-A-R-D-C-H-I-E-N, SHE'S SHORT \$25.91?

4 A. YES.

5 Q. AND THAT THERE ARE OTHER SERVERS ON THERE WITH  
6 DISCREPANCIES, FOR EXAMPLE, \$4, \$27, \$12, \$43, \$34, 29.

7 DO YOU SEE ALL OF THOSE?

8 A. YES.

9 Q. WERE THEY ALL WRITTEN UP?

10 A. NO.

11 Q. YOU TESTIFIED EARLIER, MR. ORTEGA, WHEN YOU SPOKE TO  
12 MR. SUMMERS, WHO CLAIMED TO BE MS. DANG'S HUSBAND, HE WAS THE  
13 ONE WHO REFUSED TO HAVE HER ATTEND THE MEETING; RIGHT?

14 A. REPEAT THAT AGAIN.

15 Q. I'M REFERRING BACK TO YOUR CONVERSATION WITH  
16 MR. SUMMERS --

17 A. YES.

18 Q. -- OF DECEMBER 21ST.

19 AND WAS IT YOUR TESTIMONY THAT IT WAS MR. SUMMERS WHO SAID  
20 THAT HE WAS REFUSING, ON HIS WIFE'S BEHALF, FOR HER TO ATTEND  
21 THE MEETING AND H.R. AFTER HER SHIFT ENDED?

22 A. WHEN HE CALLED, YES. WHEN HE CALLED?

23 Q. YES. SO THAT WAS YOU CONSIDERING HER REFUSING TO ATTEND  
24 THE MEETING; CORRECT?

25 A. YES.

1 Q. AND AFTER YOU SPOKE WITH MR. SUMMERS, YOU HAD NO FURTHER  
2 CONVERSATION WITH MS. DANG OTHER THAN TO LET HER OUT EARLY THAT  
3 DAY?

4 A. YES.

5 Q. DID YOU EVER ASK HER WHETHER SHE WAS REFUSING TO ATTEND  
6 THE MEETING?

7 A. I DIDN'T ASK HER.

8 Q. DID YOU EVER TALK TO HER ABOUT HER HUSBAND REFUSING ON HER  
9 BEHALF?

10 A. NO.

11 Q. I'D LIKE FOR YOU TO TURN YOUR ATTENTION NOW TO  
12 EXHIBIT 1003.

13 YOU TESTIFIED, MR. ORTEGA, THAT YOU ACTUALLY WROTE THAT  
14 STATEMENT ON THE 21ST OF -- DECEMBER 21ST, 2009; IS THAT  
15 CORRECT?

16 A. I'M MAKING SURE.

17 Q. THAT'S THE ONE THAT YOU JUST SPOKE TO COUNSEL ABOUT, ABOUT  
18 FIVE MINUTES AGO?

19 A. YES.

20 Q. AND YOU RECALL TESTIFYING THAT YOU HAD WRITTEN IN  
21 HANDWRITING YOUR STATEMENT ON DECEMBER 21ST, 2009?

22 A. YES.

23 Q. BUT THAT IT WAS BETSY WHO TYPED IT UP FOR YOU ON  
24 JANUARY 7TH?

25 A. YES.

1 Q. ABOUT TWO, THREE WEEKS LATER?

2 A. IF THAT'S WHAT IT SAYS, YES.

3 Q. AND WHAT HAPPENED TO THE HANDWRITTEN STATEMENT?

4 A. I DON'T RECALL.

5 Q. AND IS IT YOUR PRACTICE, MR. ORTEGA, TO HAVE BETSY TYPE UP  
6 STATEMENTS BY YOUR EMPLOYEES?

7 A. YES.

8 Q. AND WHEN SHE TYPES THEM UP, SHE PUTS DOWN THE DATE THAT  
9 SHE TYPED THEM UP?

10 A. YES.

11 Q. WHY DOES SHE DO THAT INSTEAD OF THE DATE OF THE ACTUAL  
12 STATEMENT BY THE EMPLOYEE?

13 A. BETSY LIKES TO WRITE WHEN SHE DOES HER TYPING AND IT'S THE  
14 DAY SHE DOES THE TYPING.

15 Q. AND THEN AFTER SHE'S DONE, DOES SHE KEEP THE HANDWRITTEN  
16 STATEMENT?

17 A. SHE DOESN'T -- I DON'T KNOW. SHE DOES NOT.

18 Q. AND YOU SAID THAT THIS STATEMENT WAS USED FOR THE UNION?

19 A. YES.

20 Q. AND YOU GAVE IT TO H.R. OR THE UNION?

21 A. H.R.

22 Q. AND WAS IT FOR THE GRIEVANCE OR THE TERMINATION?

23 A. I DON'T RECALL WHICH ONE IT WAS.

24 Q. WELL, THE STATEMENT OF YOURS WAS ABOUT THE DECEMBER 21ST,  
25 2009, DATE; RIGHT?

1 A. RIGHT.

2 Q. AND THAT WAS THE DATE THAT MS. DANG WAS TERMINATED;  
3 CORRECT?

4 A. YES.

5 MS. NGUYEN: THAT'S ALL OF THE QUESTIONS I HAVE.  
6 THANK YOU, YOUR HONOR.

7 MS. MURAKAMI: JUST ONE FOLLOW-UP QUESTION.

8 THE COURT: IF IT'S ONE.

9 **AS-ON REDIRECT EXAMINATION**

10 BY MS. MURAKAMI:

11 Q. I JUST WANT TO CLARIFY ONE THING.

12 BEFORE YOU HAD SPOKEN WITH MS. DANG'S HUSBAND ON THE PHONE  
13 ON DECEMBER 21ST, 2009, HAD MS. DANG ALREADY REFUSED TO ATTEND  
14 THE MEETING?

15 A. SHE SAID SHE WAS TIRED AND SHE WASN'T -- SHE DIDN'T WANT  
16 TO GO.

17 Q. OKAY. THANK YOU.

18 THE COURT: OKAY. YOU MAY STEP DOWN, MR. ORTEGA.  
19 YOU'RE FINISHED.

20 THE WITNESS: THANK YOU.

21 THE COURT: CALL YOUR NEXT WITNESS.

22 MS. NGUYEN: YES, YOUR HONOR. THE PLAINTIFF WOULD  
23 LIKE TO CALL MR. MICHAEL WILSON.

24 THE COURT: OKAY. COME FORWARD AND WE'LL GET YOU  
25 WHERE YOU NEED TO GO.

1 COME FORWARD AND MY COURT REPORTER WILL SWEAR YOU IN.

2 THE CLERK: RAISE YOUR RIGHT HAND.

3 **(MICHAEL WILSON, PLAINTIFF'S WITNESS, SWORN.)**

4 THE WITNESS: I DO.

5 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

6 PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR  
7 THE RECORD.

8 THE WITNESS: MICHAEL ANTHONY WILSON, W-I-L-S-O-N.

9 THE CLERK: THANK YOU.

10 **AS-ON CROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q. GOOD MORNING, MR. WILSON.

13 A. GOOD MORNING.

14 Q. AND YOU'RE CURRENTLY EMPLOYED AT BAY 101; IS THAT TRUE?

15 A. YES.

16 Q. AND HOW LONG HAVE YOU BEEN THERE?

17 A. NINETEEN YEARS.

18 Q. AND WHAT IS YOUR CURRENT POSITION?

19 A. CASINO SHIFT MANAGER.

20 Q. AND WAS THAT THE SAME POSITION THAT YOU HAD DURING THE  
21 PERIOD OF 2006 TO 2009?

22 A. YES.

23 Q. AND YOU BEGAN DATING MY CLIENT, CUC DANG, AFTER SHE  
24 STARTED WORKING AT BAY 101, DIDN'T YOU?

25 A. DEFINE "DATING."

1 Q. YOU HAVE GONE OUT ON DATES WITH HER?

2 A. I WENT TO DINNER WITH HER A COUPLE OF TIMES, YES.

3 Q. AND YOU MET HER DAUGHTER LISA?

4 A. YES.

5 Q. AND YOU MET HER OTHER DAUGHTERS IN -- WHO LIVE IN  
6 LAS VEGAS?

7 A. WE WENT TO DINNER ONCE, YES.

8 Q. AND YOU HAVE ALSO BEEN OUT TO DINNER BY YOURSELF WITH  
9 MS. DANG; CORRECT?

10 A. A COUPLE OF TIMES, YES.

11 Q. AND YOU'VE ALSO TAKEN MS. DANG TO THE EMERGENCY ROOM ONCE?

12 A. YES.

13 Q. AND YOU WAITED AROUND TO DRIVE HER HOME AFTER THE  
14 EMERGENCY ROOM?

15 A. YES.

16 Q. BUT AT SOME POINT WHILE MY CLIENT WAS STILL WORKING AT  
17 BAY 101, YOU AND SHE STOPPED DATING; CORRECT?

18 A. IF YOU CALL GOING TO DINNER "DATING," YES.

19 Q. YOU STOPPED GOING OUT TO DINNER DATES?

20 A. YES, UH-HUH.

21 Q. AND DO YOU RECALL THAT IN THE 2008/2009 TIMEFRAME, THAT  
22 MS. DANG WANTED TO TRANSFER OUT FROM THE KITCHEN TO BECOME A  
23 SERVER ON THE FLOOR?

24 A. YES.

25 Q. AND THAT YOU ASSISTED HER WITH THAT REQUEST?



1 A. NO.

2 Q. DO YOU RECALL SPEAKING TO TOM BOWLING, ONE OF BAY 101'S  
3 OWNERS, TO HELP HER GET TRANSFERRED?

4 A. I LEFT HIM A VOICE MESSAGE, I BELIEVE.

5 Q. TO TELL HIM THAT SHE HAD ASKED HER SUPERVISOR FOR A  
6 TRANSFER BUT THAT HE HAD NOT GIVEN HER ONE FOR WHATEVER REASON  
7 YOU DIDN'T KNOW.

8 DO YOU RECALL THAT?

9 A. CUC HAD ASKED ME WHO NICK'S SUPERVISOR WAS AT THE TIME  
10 BECAUSE SHE WANTED TO TALK TO NICK'S SUPERVISOR ABOUT BEING  
11 TRANSFERRED. I TOLD HER WHO THAT WAS AT THE TIME, YES.

12 Q. AND WAS IT -- WASN'T IT BECAUSE SHE HAD WAITED A LONG TIME  
13 TO GET A RESPONSE FROM MR. ORTEGA?

14 A. THAT I WOULDN'T KNOW. I'M SORRY.

15 Q. AND AFTER SHE SPOKE WITH YOU WAS WHEN YOU LEFT THE MESSAGE  
16 FOR MR. BOWLING?

17 A. CORRECT.

18 Q. AND ISN'T IT TRUE THAT AFTER YOU LEFT THE MESSAGE FOR  
19 MR. BOWLING, THAT MS. DANG WAS TRANSFERRED OUT TO BECOME A  
20 SERVER?

21 A. SHE HAD A SERVER'S UNIFORM ON SHORTLY AFTER THAT. I WOULD  
22 IMAGINE, YES.

23 Q. AND DO YOU KNOW A MAN BY THE NAME OF LUCIO SUAREZ?

24 A. I DO, YES.

25 Q. AND ARE YOU AWARE THAT MS. DANG WAS SEXUALLY HARASSED BY

1 MR. SUAREZ?

2 A. I WAS NOT.

3 Q. SHE NEVER TOLD YOU ABOUT IT?

4 A. NO.

5 Q. AND YOU NEVER TOLD HER THAT SHE SHOULD GET HERSELF  
6 TRANSFERRED OUT TO THE FLOOR SO THAT YOU COULD WATCH OVER HER?

7 A. NO.

8 Q. DURING THE TIME PERIOD OF 2006 TO 2009, IT WAS PART OF  
9 YOUR JOB, WASN'T IT, TO ADDRESS AND HANDLE CUSTOMER COMPLAINTS  
10 REGARDING FOOD AND DRINKS?

11 A. YES AND NO.

12 Q. YOU WERE THE CASINO'S SHIFT MANAGER; CORRECT?

13 A. YES.

14 Q. AND SO IF THERE WERE PROBLEMS WITH CUSTOMERS, THE SERVERS  
15 COULD COME TO YOU?

16 A. YES.

17 Q. AND IF CUSTOMERS HAD COMPLAINTS ABOUT THE FOOD OR THE  
18 DRINKS THAT THEY RECEIVED, THEY COULD COME TO YOU?

19 A. YES.

20 Q. AND IN THOSE SITUATIONS YOU WOULD GO TALK TO THE CUSTOMER  
21 AND TRY TO MAKE THEM MORE SATISFIED; RIGHT?

22 A. MOST, YES.

23 Q. AND YOU RECALL THAT YOU AND I HAVE MET BEFORE AT YOUR  
24 DEPOSITION; RIGHT?

25 A. YES.

1 Q. AND THAT AT THAT TIME YOU ANSWERED SOME OF MY QUESTIONS  
2 UNDER OATH.

3 DO YOU REMEMBER THAT?

4 A. YES.

5 Q. AND ISN'T IT TRUE, MR. WILSON, THAT WHEN MS. DANG WAS  
6 WORKING AT BAY 101, YOU WERE NOT AWARE OF ANY COMPLAINTS BY  
7 ANYONE AT BAY 101 ABOUT HER?

8 A. DEFINE "COMPLAINTS."

9 Q. ANY COMPLAINTS BY ANYONE?

10 A. WELL, THERE'S -- THERE ARE SMALL COMPLAINTS OFTEN ABOUT  
11 PEOPLE. I MEAN, THE WRONG ORDER OR SOMETHING.

12 Q. DO YOU RECALL THAT AT YOUR DEPOSITION YOU TOLD ME THAT YOU  
13 WERE NOT AWARE OF ANY COMPLAINTS BY ANYONE AT BAY 101 ABOUT  
14 CUC DANG?

15 A. OKAY, YES.

16 Q. YOU RECALL THAT NOW?

17 A. UH-HUH.

18 Q. AND DO YOU ALSO RECALL THAT YOU TOLD ME AT THE DEPOSITION  
19 THAT YOU ARE NOT AWARE OF ANY COMPLAINTS ABOUT CUC WHEN SHE WAS  
20 WORKING AS A COOK IN THE KITCHEN?

21 A. YES.

22 Q. AND THAT YOU WERE ALSO NOT -- I'M SORRY.

23 DO YOU RECALL TELLING ME THAT YOU WERE AWARE OF COMPLAINTS  
24 ABOUT CUC WHEN SHE WAS WORKING AS A SERVER?

25 A. I'M SORRY. COULD YOU REPEAT THAT, PLEASE.

1 Q. YOU WERE AWARE OF SOME COMPLAINTS ABOUT MS. DANG WHEN SHE  
2 WAS WORKING AS A SERVER?

3 A. YES.

4 Q. AND ISN'T IT TRUE, HOWEVER, THAT YOU TOLD ME THAT THE  
5 COMPLAINTS ABOUT MS. DANG, WHEN SHE WAS WORKING AS A SERVER,  
6 WERE JUST NORMAL COMPLAINTS THAT ARE MADE AGAINST ALL OF THE  
7 OTHER WAITRESSES?

8 A. YES.

9 Q. FOR EXAMPLE, YOU -- I THINK YOU GAVE ME AN EXAMPLE OF ALL  
10 OF THE OTHER WAITRESSES ALSO MAKING MISTAKES WITH ORDERING THE  
11 WRONG FOOD OR DRINKS?

12 A. IT HAPPENS, YES.

13 Q. AND THAT WHEN A CUSTOMER COMPLAINS THAT HE ORDERS  
14 SOMETHING BUT THEN RECEIVES SOMETHING ELSE, YOU WOULD CALL THE  
15 KITCHEN SUPERVISOR AND THEN HAVE THEM TO TRY TO REMAKE THE FOOD  
16 TO MAKE THE CUSTOMER HAPPY; CORRECT?

17 A. YES.

18 Q. AND THAT IT'S -- IN YOUR EXPERIENCE THOSE MISTAKES ARE  
19 MADE BY EVERY WAITRESS AT BAY 101, ISN'T IT?

20 A. SOME MORE THAN OTHERS, YES.

21 Q. AND THAT ACCORDING TO YOU, THE COMPLAINTS ABOUT CUC ARE  
22 SIMILAR TO THE COMPLAINTS LODGED AGAINST THE OTHER WAITRESSES;  
23 CORRECT?

24 A. YES.

25 Q. AND THAT YOU ARE NOT AWARE OF ANY OTHER COMPLAINTS ABOUT

1 MS. DANG THAT WOULD BE OUT OF THE ORDINARY; ISN'T THAT TRUE?

2 A. YES.

3 Q. NOW, AGAIN, WHEN I SPOKE TO YOU AT YOUR DEPOSITION, YOU  
4 RECALL THAT YOU WERE THERE ON OCTOBER 4TH, 2009, WORKING  
5 WHEN --

6 A. I'M SORRY, NO.

7 Q. I'M SORRY. LET ME -- I'M TALKING ABOUT THE INCIDENT  
8 BETWEEN MS. DANG AND MS. ELIAS.

9 DO YOU RECALL THAT?

10 A. YES.

11 Q. AND THAT OCCURRED ON OCTOBER 4TH, 2009?

12 A. WHATEVER YOU SAY, YES.

13 Q. DO YOU RECALL THE INCIDENT?

14 A. I DO.

15 Q. AND DO YOU RECALL THAT YOU WORKED THAT NIGHT?

16 A. I RECALL THE INCIDENT.

17 Q. AND -- BUT YOU WEREN'T THERE TO SEE WHAT HAPPENED;  
18 CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND YOU DID SPEAK WITH THE CUSTOMER; CORRECT?

21 A. YOU'VE ASKED ME THAT MULTIPLE TIMES. I NORMALLY DO, BUT I  
22 CAN'T SAY THAT I DID THAT NIGHT. I DON'T KNOW.

23 Q. AND DO YOU REMEMBER ANYTHING ELSE THAT HAPPENED ON THAT  
24 NIGHT WITH RESPECT TO THE INCIDENT BETWEEN MS. DANG AND  
25 MS. ELIAS?

1 A. REALLY, NO.

2 Q. YOU RECALL BEING INTERVIEWED BY AN INVESTIGATOR BY THE  
3 NAME OF CAROLE EDMAN?

4 A. YES.

5 Q. AND DO YOU RECALL THAT SHE TOLD YOU THAT MS. DANG SAID  
6 THAT YOU WERE HER FIANCE?

7 A. YES.

8 Q. AND DID THAT TAKE YOU BY SURPRISE?

9 A. YES.

10 Q. BECAUSE YOU AND MS. DANG HAD NEVER BEEN FIANCES; CORRECT?

11 A. THAT'S CORRECT.

12 MS. NGUYEN: THOSE ARE ALL OF THE QUESTIONS THAT I  
13 HAVE FOR MR. WILSON, YOUR HONOR.

14 THE COURT: ANY QUESTIONS?

15 MR. MCMANIS: THANK YOU.

16 AS-ON **DIRECT EXAMINATION**

17 BY MR. MCMANIS:

18 Q. GOOD MORNING, MR. WILSON.

19 A. GOOD MORNING.

20 Q. YOU AND I HAVE NEVER SPOKEN BEFORE; IS THAT TRUE?

21 A. THAT'S CORRECT.

22 THE COURT: I THINK IT'S AFTERNOON, MR. MCMANIS.

23 MR. MCMANIS: PARDON ME?

24 THE COURT: I THINK IT'S AFTERNOON, BUT THAT'S OKAY.

25 MR. MCMANIS: I STAND CORRECTED. OCCASIONALLY AN

1 ELDERLY PERSON GETS THE TIME WRONG. IT IS AFTERNOON, I  
2 BELIEVE, AT 1:05.

3 Q. IS THAT YOUR MEASURE, SIR?

4 A. UH-HUH.

5 Q. YOU HAVE TO SAY YES OR NO?

6 A. YES, SIR.

7 Q. ALL RIGHT. A ROUGH PLACE TO WORK.

8 IN ANY EVENT, THERE WAS A QUESTION ABOUT DATING AND YOU  
9 SAID PLEASE DEFINE "DATING."

10 HOWEVER YOU THINK OF DATING IN YOUR MIND, DID YOU EVER  
11 DATE THE PLAINTIFF, MS. DANG?

12 A. WE DID GO TO DINNER A COUPLE OF TIMES, YES.

13 Q. NOW, THERE ARE DINNERS AND THERE ARE DINNERS. DID YOU IN  
14 ANY SENSE THINK OF THE DINNERS THAT YOU HAD WITH HER AS SOME  
15 SORT OF A ROMANTIC OR AMOROUS OCCASION?

16 A. I WOULD SAY NO.

17 Q. THAT WAS -- DID YOU EVER HAVE A CONVERSATION WITH THE  
18 PLAINTIFF WHERE SHE TOLD YOU SHE THOUGHT THERE WAS SOME KIND OF  
19 A ROMANTIC RELATIONSHIP BETWEEN YOU?

20 A. COULD YOU REPEAT THAT. I'M SORRY.

21 Q. SURE. DID SHE EVER CALL YOU ON AN OCCASION AND TELL YOU  
22 THAT SHE VIEWED YOU AS SOME KIND OF A ROMANTIC PARTNER?

23 A. YES.

24 Q. AND WOULD YOU TELL THE JURY THE CIRCUMSTANCES OF THAT,  
25 PLEASE?

1 A. I RECEIVED A PHONE CALL ONE NIGHT, AND I WAS DRIVING DOWN  
2 MERIDIAN AVENUE, AND I'LL NEVER FORGET IT AS LONG AS I LIVE. I  
3 WAS ACTUALLY WITH MY GIRLFRIEND AT THE TIME. AND I KEEP MY  
4 PHONE ON THE VISOR AND I JUST REACHED UP AND HIT THE TOP BUTTON  
5 OR THE SPEAKER BUTTON AND I SAID, "HELLO."

6 AND WE STARTED TALKING AND SHE TOLD ME THAT SHE LOVED ME  
7 AND WANTED TO KNOW HOW COME I HAVEN'T MARRIED HER, AND ET  
8 CETERA.

9 Q. SHE LOVED YOU AND WANTED TO KNOW WHY YOU HADN'T MARRIED  
10 HER?

11 A. SHE WANTED TO GET MARRIED, YES.

12 Q. OKAY. WAS THAT ON -- THAT WAS ON THE SPEAKERPHONE?

13 A. IT WAS ON THE SPEAKERPHONE, YES.

14 Q. AND WAS ANYONE ELSE IN THE CAR BESIDES YOU AND YOUR  
15 GIRLFRIEND?

16 A. NO.

17 Q. AND WHAT DID YOU SAY, IF ANYTHING, IN REPLY TO THIS  
18 PROPOSAL I GUESS?

19 A. I TRIED TO EXPLAIN TO HER THAT WE WERE FRIENDS AND THAT I  
20 DIDN'T VIEW HER IN THAT WAY, AND THAT I WAS SORRY AND THAT SHE  
21 MISUNDERSTOOD.

22 AT THAT POINT THERE I DON'T EVEN THINK I HAD TALKED TO HER  
23 OR SEEN HER IN A FEW MONTHS OR MAYBE EVEN MORE.

24 Q. OKAY. NOW, YOU MENTION THAT ON ONE OCCASION YOU TOOK HER  
25 TO THE HOSPITAL?



1 A. YES.

2 Q. AND COULD YOU TELL THE JURY, PLEASE, WHAT THE  
3 CIRCUMSTANCES OF THAT TRIP WERE?

4 A. OKAY. I'M THE SWING SHIFT MANAGER -- EXCUSE ME. WHEN I  
5 GET OFF AT 1:00 OR 1:30 IN THE MORNING, I USUALLY GO HOME AND I  
6 UNWIND UNTIL 3:00 OR 4:00 O'CLOCK IN THE MORNING AND THEN I  
7 USUALLY GO TO BED.

8 MS. DANG'S DAUGHTER, LISA, WHICH I BECAME CLOSE TO BECAUSE  
9 SHE'S JUST A GREAT KID, CALLED ME AND SAID THAT HER MOTHER WAS  
10 ILL AND ASKED IF I WOULD TAKE HER TO THE HOSPITAL FOR HER AND  
11 FOR HER. AND I GLADLY DID IT.

12 I CAME DOWN AND PICKED THEM UP -- PICKED HER UP, I'M  
13 SORRY, PICKED HER UP. I TOOK HER TO THE VALLEY MEDICAL CENTER,  
14 AND WE WERE THERE FOR TWO OR THREE HOURS AND MOST OF THE TIME I  
15 WAITED OUTSIDE IN THE -- OUTSIDE IN THE AIR, THE FRESH AIR, AND  
16 WHEN THEY RELEASED HER, I TOOK HER HOME. EXCUSE ME.

17 Q. ALL RIGHT. SO YOU WERE AT HOME WHEN HER DAUGHTER CALLED?

18 A. THAT'S CORRECT, UH-HUH.

19 Q. AND DID EITHER HER DAUGHTER OR MS. DANG EVER TELL YOU THE  
20 NATURE OF THE PROBLEM, THE MEDICAL COMPLAINT?

21 A. NO.

22 Q. OKAY. BUT IN ANY EVENT, YOU PICKED MS. DANG UP, YOU DROVE  
23 HER TO VALLEY MEDICAL CENTER?

24 A. YES.

25 Q. WAITED SEVERAL HOURS OUTSIDE UNTIL SHE WAS RELEASED?

1 A. YES.

2 Q. AND DROVE HER HOME?

3 A. YES.

4 Q. DOES THAT SUM IT UP?

5 A. THAT SUMS IT UP.

6 Q. NOW, WE HEARD SOME QUESTIONS ABOUT A TRANSFER. DO YOU  
7 RECALL WHEN IT WAS THAT MS. DANG ASKED YOU WHO IS NICK ORTEGA'S  
8 SUPERVISOR?

9 A. ARE YOU ASKING ME IF I REMEMBER THE DATE?

10 Q. YEAH.

11 A. NO.

12 Q. ALL RIGHT. BUT THE PURPOSE WAS WHAT?

13 A. SHE FELT THAT NICK WAS NOT TREATING HER FAIRLY AND SHE  
14 WANTED TO KNOW WHO NICK'S SUPERVISOR WAS AND I TOLD HER WHO IT  
15 WAS.

16 Q. OKAY. AND THEN I TAKE IT -- AND WHO WAS THAT PERSON FOR  
17 THE RECORD?

18 A. TOM BOWLING AT THE TIME.

19 Q. AND DID YOU LEAVE A MESSAGE FOR MR. BOWLING THAT HE MIGHT  
20 BE HEARING FROM HER?

21 A. CORRECT.

22 Q. AND ANY FURTHER CONVERSATION WITH MR. BOWLING OR ANY  
23 CONVERSATION WITH MR. BOWLING?

24 A. I BELIEVE I LEFT HIM A MESSAGE. I MIGHT HAVE TALKED TO  
25 HIM ONCE OTHER THAN THAT, BUT I DON'T THINK SO.

1 Q. OKAY. NOW, THERE WERE SOME QUESTIONS ABOUT YOUR  
2 DEPOSITION. DO YOU RECALL WHEN YOU GAVE A DEPOSITION IN THIS  
3 CASE?

4 LET ME HELP YOU OUT HERE.

5 A. OKAY.

6 Q. THE COPY I HAVE SAYS FEBRUARY 15, 2012. DOES THAT REFRESH  
7 YOUR RECOLLECTION?

8 A. I GUESS SO IF THAT'S WHAT IT SAYS.

9 Q. ALL RIGHT. DO YOU WANT TO TAKE A LOOK AT THIS TO BE SURE?

10 A. NO, I DON'T THINK SO.

11 Q. YOU TRUST ME?

12 A. I DO.

13 Q. ALL RIGHT. ALL RIGHT. TODAY IS MAY 2ND. DO I HAVE THAT  
14 RIGHT?

15 A. YEAH.

16 Q. ALL RIGHT. I THINK WE HEARD FROM KEN, THE COOK, THAT HE  
17 GAVE HIS DEPOSITION MAY OF 2011 AND WE HAVE ESTABLISHED, I  
18 HOPE, THAT YOU GAVE YOURS FEBRUARY 15TH -- FEBRUARY 15, 2012.

19 NOW, DO YOU RECALL GIVING A STATEMENT OR BEING INTERVIEWED  
20 BY CAROLE EDMAN, THE INVESTIGATOR IN THIS MATTER?

21 A. I DO RECALL THAT, YES.

22 Q. I WANT TO LOOK AT THAT.

23 WOULD YOU PUT THAT UP, PLEASE, CINDY.

24 MS. MCCLELEN: DO YOU HAVE A PARTICULAR PAGE IN  
25 MIND?

1 MR. MCMANIS: PAGE 40. I APOLOGIZE.

2 MS. NGUYEN: YOUR HONOR, SIDE-BAR, PLEASE.

3 THE COURT: OKAY.

4 MR. MCMANIS: IS THAT OKAY? ALL RIGHT. NO PROBLEM.

5 THE COURT: OKAY.

6 MR. MCMANIS: BLOW THAT UP IF YOU WOULD, PLEASE.

7 Q. ALL RIGHT. MR. WILSON, HAVE YOU EVER SEEN THIS REPORT OF  
8 CAROLE EDMAN, THE INVESTIGATOR?

9 A. I DON'T BELIEVE SO, NO.

10 Q. YOU'RE SEEING IT FOR THE FIRST TIME?

11 A. I BELIEVE SO, YES.

12 Q. AND THE REPORT SAYS THAT YOU WERE HIRED BY THE COMPANY ON  
13 NOVEMBER 9, 1993. IS THAT YOUR RECOLLECTION THAT IT WAS 1993?

14 A. YES, SIR.

15 Q. OKAY. DID YOU TELL HER, QUOTE, "I'VE ALWAYS LOVED THIS  
16 JOB; CHANGES DAILY; LOT OF INTERESTING THINGS ABOUT IT"?

17 A. YES.

18 Q. AND, NOW, IT SAYS THAT THE INVESTIGATOR INTERVIEWED YOU ON  
19 NOVEMBER 11, 2009, NOVEMBER 16, 2009, WITH FOLLOW-UP CALLS ON  
20 NOVEMBER 29TH, AND NOVEMBER 30.

21 IS THAT CONSISTENT WITH YOUR MEMORY?

22 A. I DON'T REMEMBER THE CALLS, BUT I REMEMBER TALKING TO HER,  
23 YES.

24 Q. OKAY. FAIR ENOUGH. AND SHE STATED NO WITNESSES WERE  
25 PRESENT. IS THAT YOUR RECOLLECTION?

1 A. THAT'S CORRECT.

2 Q. AND JUST YOU AND THE INVESTIGATOR?

3 A. JUST HER AND I, YES.

4 Q. AND SO THAT WAS NOVEMBER 11, NOVEMBER 16TH, WERE  
5 APPARENTLY THE INTERVIEWS.

6 WE HAVE KEN, THE COOK, AND HE WAS ON THAT DATE  
7 NOVEMBER 11TH AND 16.

8 IF YOU WOULD, CINDY, GO DOWN.

9 THE INVESTIGATOR REPORTED THAT MR. WILSON HAD NO PERSONAL  
10 RELATIONSHIP WITH CUC DANG OTHER THAN AS A FRIEND AND HAD NOT  
11 HAD ANY ROMANTIC RELATIONSHIP WITH HER AT ANY TIME; THAT HE WAS  
12 WITH HIS GIRLFRIEND, NOT MS. DANG'S HOME AS MS. DANG HAD SAID  
13 WHEN MS. DANG'S DAUGHTER CALLED HIM TO TAKE MS. DANG TO THE  
14 EMERGENCY ROOM ON ONE OCCASION. AND IT GOES ON TO TALK ABOUT  
15 NO KNOWLEDGE OF OTHER HOSPITAL.

16 DO YOU RECALL TELLING THAT TO THE INVESTIGATOR?

17 A. I MUST HAVE. IT'S WRITTEN DOWN THERE. I WAS ASKED SO  
18 MANY QUESTIONS. IT LOOKS ACCURATE TO ME.

19 Q. OKAY. NOW, UNDER INVESTIGATOR'S COMMENT IT SAID,  
20 "MR. WILSON WAS VISIBLY SURPRISED BY SOME OF THE STATEMENTS  
21 MADE BY MS. DANG THAT WERE ATTRIBUTED TO HIM."

22 DO YOU RECALL SOME SURPRISE ON THE OCCASION OF YOUR  
23 INTERVIEW?

24 A. YES.

25 Q. LET'S GO TO THE NEXT POINT. THIS IS SOMETHING ABOUT A

1 RECENT RUMOR. MR. WILSON STATED THAT HE HAD NO KNOWLEDGE OF  
2 NICK ORTEGA AND LUCIO SUAREZ BEING CLOSE FRIENDS OR,  
3 QUOTE-UNQUOTE, "BEST FRIENDS" AND HE HAD NEVER SEEN THEM  
4 TOGETHER ANYWHERE OUTSIDE OF WORK.

5 IS THAT TRUE?

6 A. THAT'S CORRECT. CAN I ASK A QUESTION?

7 Q. SURE.

8 A. CAN YOU MAKE THAT BIGGER SO I CAN READ IT?

9 Q. MAESTRO.

10 MS. MCCLELEN: HE DOES HAVE A COPY IN FRONT OF HIM.

11 MR. MCMANIS: CAN I APPROACH, YOUR HONOR?

12 THE COURT: SURE.

13 BY MR. MCMANIS:

14 Q. THERE'S A COPY IN THESE BOOKS.

15 A. OH, OKAY.

16 Q. DON'T WORRY ABOUT IT. HERE IT IS.

17 ALL RIGHT. LET'S GO DOWN TO THE NEXT HEADING, MS. DANG'S  
18 CLAIM OF SELECTIVE ENFORCEMENT OF THE RULES. AND YOU ARE  
19 CERTAINLY FREE TO LOOK AT IT THERE, MR. WILSON. YOU'RE FREE TO  
20 DO THAT.

21 MS. DANG'S CLAIM OF SELECTIVE ENFORCEMENT OF RULES RELATED  
22 TO MS. DANG'S STATEMENTS ABOUT UNFAIR TREATMENT OF VIETNAMESE  
23 EMPLOYEES.

24 MR. WILSON STATED HE HAD NOT SEEN OR HEARD ANYTHING OR HAD  
25 ANY COMPLAINTS BROUGHT TO HIS ATTENTION ABOUT UNFAIR TREATMENT

1 OF VIETNAMESE EMPLOYEES, OR ANY OTHER PARTICULAR GROUP, IN HIS  
2 15 YEARS OF WORKING FOR BAY 101.

3 HE STATED, QUOTE, "'I, 100 PERCENT, DON'T BELIEVE THAT AT  
4 ALL,'" UNQUOTE.

5 DID YOU MAKE THAT STATEMENT?

6 A. CORRECT.

7 Q. AND IS THAT A TRUE STATEMENT?

8 A. CORRECT.

9 Q. AND DO YOU HAVE MANY VIETNAMESE EMPLOYEES AT BAY 101?

10 A. A VERY LARGE NUMBER, 50 PERCENT OR MORE MAYBE.

11 Q. AND HOW ABOUT VIETNAMESE CUSTOMERS, ANY VIETNAMESE  
12 CUSTOMERS?

13 A. 60 OR 70 PERCENT PROBABLY.

14 Q. AND HAVE YOU EVER MET MR. WERNER'S WIFE?

15 A. I HAVE, YES.

16 Q. AND DO YOU KNOW WHAT --

17 A. VERY NICE LADY. SHE'S VIETNAMESE, YES.

18 Q. AND THE NEXT SENTENCE IT STATES, "HE ALSO STATED HE HAD NO  
19 KNOWLEDGE OF AND HAD NEVER HEARD OF AND BEEN AWARE OF ANYONE  
20 SAYING THAT NICK ORTEGA GAVE MORE LENIENT TREATMENT TO  
21 NON-VIETNAMESE EMPLOYEES THAN HE GAVE TO VIETNAMESE EMPLOYEES."

22 IS THAT YOUR BELIEF?

23 A. YES, SIR.

24 Q. LET'S GO TO THE NEXT PAGE, PAGE 42, THE COMPLAINT OF  
25 UNFAIR SUSPENSION.

1           AND YOU CAN BLOW THAT UP, CINDY.

2           THE INVESTIGATOR NOTED THAT YOU HAD NEVER HEARD ANY  
3           COMPLAINTS ABOUT THE BARTENDER, BETH LICONA. AND WE HEARD  
4           ABOUT HER THIS MORNING. THAT LINDA ELIAS WAS THE BEST FOOD  
5           SERVER ON HER SHIFT AND IS KNOWN TO TRY TO HELP HER COWORKERS  
6           BUT THAT HE HAD HAD A NUMBER OF COMPLAINTS ABOUT MS. DANG.

7           IS THAT ALL TRUE?

8           A. YES, SIR.

9           Q. STATED THAT MS. DANG'S ENGLISH COMPREHENSION IS POOR, AND  
10          THAT THERE HAVE BEEN MANY OCCASIONS WHEN SHE HAS GOTTEN AN  
11          ORDER WRONG, ESPECIALLY WITH ALCOHOLIC DRINK ORDERS.

12          HE IS MADE AWARE OF THESE BECAUSE AS THE SHIFT MANAGER, HE  
13          HAS TO APPROVE TICKET VOIDS WHEN MISTAKES OR OVERRINGS OCCUR  
14          AND HE HEARS IT FROM OTHER FOOD SERVERS WHO SAY THAT MS. DANG'S  
15          ERRORS ARE BECAUSE SHE DOES NOT UNDERSTAND ENGLISH VERY WELL.

16          IS THAT YOUR EXPERIENCE?

17          A. YES.

18          Q. AND APPARENTLY YOU TOLD THE INVESTIGATOR THAT YOU WERE AT  
19          WORK WHEN AN INCIDENT AROSE AT WORK ON OCTOBER 4TH, 2009. IT  
20          WAS BROUGHT TO YOUR ATTENTION.

21          I THINK REGARDING THIS NEXT SENTENCE HE STATED THAT HE  
22          WENT TO THE CUSTOMER LATER TO VERIFY THAT THE CUSTOMER HAD THE  
23          DRINK HE WANTED AND STATED THAT THE CUSTOMER DID NOT SEEM TOO  
24          UPSET AT THAT TIME.

25          YOU DON'T RECALL THE DAY WHETHER YOU DID IT OR NOT, BUT I



1 THINK YOU DID SAY IN FAIRNESS THAT'S SOMETHING YOU WOULD HAVE  
2 DONE?

3 A. IT'S MY NORMAL PROCEDURE.

4 Q. OKAY. MS. DANG -- MR. WILSON ATTRIBUTED THE PROBLEM TO  
5 MS. DANG'S ENGLISH NOT BEING THAT GOOD AND THAT MS. DANG  
6 APPEARS TO BE, QUOTE-UNQUOTE, "TO HAVE A LITTLE TEMPER."

7 NOW, THIS NEXT PARAGRAPH HERE HE APPARENTLY BRINGS UP  
8 ANOTHER INCIDENT WITH THE BARTENDER BETH LICONA. AND YOUR  
9 QUOTE IS SAYING, "HE WARNED MS. DANG TO KEEP YOUR TONGUE ABOUT  
10 YOU AND NO ARGUMENTS IN FRONT OF THE BAR, PRIOR TO ESCORTING  
11 HER TO THE BAR AREA TO ADDRESS THE PROBLEM."

12 MS. DANG DID NOT FOLLOW --

13 MS. NGUYEN: OBJECTION, YOUR HONOR.

14 THE COURT: I THINK YOU CAN ASK QUESTIONS.

15 MR. MCMANIS: ALL RIGHT.

16 Q. WELL, LET'S LOOK AT THIS NEXT SENTENCE HERE. IF YOU WOULD  
17 LOOK AT THE SENTENCE, PLEASE, ABOUT MS. DANG DID NOT FOLLOW  
18 YOUR INSTRUCTION AND HAD A LOUD VERBAL ALTERCATION WITH BETH IN  
19 FRONT OF CUSTOMERS, MR. MEAKCHAROON, AND MR. WILSON.

20 DO YOU RECALL THAT?

21 A. I DO RECALL.

22 Q. ALL RIGHT. WHAT DO YOU RECALL IN THAT REGARD?

23 A. I TALKED TO CUC FIRST AND SHE TOLD ME WHAT WAS BOTHERING  
24 HER.

25 AND THEN I WENT TO THE OTHER PARTY WHICH WAS BETH IN THE

1 BAR THROUGH THE BACK WINDOW OF THE BAR AND CUC CAME ALONG, AND  
2 I TOLD CUC THAT SHE SHOULDN'T BE THERE BECAUSE I WANTED TO HEAR  
3 THAT SIDE OF THE CONVERSATION. SO SHE STOOD OFF TO THE SIDE  
4 AND SHE GOT CLOSER.

5 SHE CONTINUED TO CALL BETH A LIAR. AND I TOLD CUC TO  
6 STAND OFF SO I COULD HEAR BETH'S SIDE OF THE STORY. SO WHEN  
7 SHE CONTINUED TO CALL BETH A LIAR AND THE SITUATION JUST GOT  
8 UGLIER, SO I ASKED HER TO STAND DOWN BECAUSE IT WAS BECOMING  
9 LOUD.

10 Q. NOW, YOU SAY YOU TOLD HER TO STAND OFF BUT SHE DID AND WAS  
11 SHE APPROACHING, WAS SHE?

12 A. SHE WAS FACING THE BAR WINDOW AND CUC WAS TO MY LEFT AT  
13 THAT TIME OFF AND THEN SHE APPROACHED.

14 Q. WHEN YOU SAY THAT SHE KEPT CALLING BETH A LIAR, ACCORDING  
15 TO THE INVESTIGATOR'S NOTE, MS. DANG CALLED BETH A LIAR FOUR  
16 TIMES. IS THAT -- DO YOU RECALL THAT NUMBER OR NOT?

17 A. I DON'T RECALL THAT NUMBER, I'M SORRY.

18 Q. ALL RIGHT. WELL, THIS WAS A STATEMENT THAT YOU GAVE THE  
19 INVESTIGATOR I GUESS ABOUT SIX WEEKS AFTER THE INCIDENT?

20 A. OKAY.

21 Q. WAS YOUR RECOLLECTION OF THE INCIDENT AT THAT TIME --

22 A. I WOULD HAVE TO SAY IT WAS PROBABLY BETTER AT THAT TIME  
23 THAN NOW.

24 Q. YEAH, WE'RE NOW THREE PLUS YEARS LATER.

25 DID I GET THAT RIGHT? IT'S 2013?

1 A. FOUR.

2 Q. NINE AND FOUR IS THIRTEEN?

3 A. OKAY.

4 Q. NOW, IN FAIRNESS TO THE PLAINTIFF THIS LAST STATEMENT THAT  
5 MR. WILSON FELT THIS WAS UNACCEPTABLE ESPECIALLY IN FRONT OF  
6 CUSTOMERS AND REQUESTED MS. DANG APOLOGIZE TO BETH, WHICH SHE  
7 DID, RIGHT? OR YOU DON'T RECALL?

8 A. I DON'T RECALL, BUT AFTER READING IT HERE, OBVIOUSLY SHE  
9 DID.

10 Q. OKAY, FINE.

11 MR. MCMANIS: THANK YOU. THAT'S ALL I HAVE, YOUR  
12 HONOR.

13 THE COURT: ANYTHING FURTHER?

14 MS. NGUYEN: JUST A QUICK FOLLOW-UP, YOUR HONOR.

15 **AS-ON RECROSS-EXAMINATION**

16 BY MS. NGUYEN:

17 Q. MR. WILSON, YOU MENTIONED YOU BECAME FRIENDS WITH  
18 MS. DANG'S DAUGHTER, LISA; CORRECT?

19 A. YES.

20 Q. AND LISA HAD BEEN TO BAY 101 BEFORE?

21 A. YES.

22 Q. AND DO YOU RECALL TAKING HER AROUND AND INTRODUCING HER TO  
23 PEOPLE WHO WORKED AT BAY 101?

24 A. DO I REMEMBER TAKING LISA AROUND AND INTRODUCING HER TO  
25 PEOPLE AT BAY 101?

1 Q. YES.

2 A. NO.

3 Q. AND YOU DON'T RECALL SHE'S BEEN THERE TO SEE YOU?

4 A. THE FIRST TIME I MET LISA WAS I BELIEVE THE CHRISTMAS  
5 PARTY WHEN CUC BROUGHT HER DAUGHTER TO THE CHRISTMAS PARTY.  
6 THE WHOLE COMPANY WAS THERE HAVING A CHRISTMAS PARTY.

7 Q. WERE YOU THE ONE THAT TOOK LISA TO DMV TO GET HER LICENSE?

8 A. YES.

9 Q. AND, MR. WILSON, YOU STATED EARLIER THAT YOU HAD GONE ON  
10 DINNER -- OUT TO DINNER WITH MS. DANG AND HER FAMILY?

11 A. YES.

12 Q. AND YOU DIDN'T CONSIDER THOSE DATES, YOU SAID THAT?

13 A. NO.

14 Q. NO, YOU DIDN'T CONSIDER THEM DATES OR, NO, YOU DIDN'T SAY  
15 THAT?

16 A. NO, I DIDN'T CONSIDER THOSE DATES. I DON'T --

17 Q. EXCUSE ME. IS THERE SOMETHING YOU WANT TO ADD?

18 A. WELL, I DON'T CONSIDER GOING TO A PHO HOUSE FOR SOUP IS AN  
19 ACTUAL DATE. MAYBE YOU DO. I DON'T KNOW.

20 Q. WELL, ISN'T IT TRUE THAT AFTER YOU WERE INTERVIEWED BY THE  
21 INVESTIGATOR THAT YOU WENT TO MR. WERNER AND APOLOGIZED FOR NOT  
22 LETTING HIM KNOW EARLIER ABOUT HIS RELATIONSHIP WITH MS. DANG?

23 A. THAT'S NOT NECESSARILY THE REASON WHY I WENT TO  
24 MR. WERNER, NO.

25 Q. AND DID YOU APOLOGIZE TO HIM?

1 A. I DON'T RECALL. MAYBE I DID.

2 Q. AND DID YOU ADVISE HIM THAT YOU HAD BEEN OUT TO DINNER  
3 WITH MS. DANG AND HER FAMILY?

4 A. YES.

5 Q. OKAY. AND YOU ALSO ADVISED HIM THAT YOU HAD TAKEN  
6 MS. DANG TO THE EMERGENCY ROOM; CORRECT?

7 A. I DON'T RECALL. WHAT I DO RECALL IS BEING ANGRY THAT I  
8 HAD NO RETALIATION FOR WHAT WAS SAID TO ME ABOUT THE ACCUSATION  
9 BEING MADE TO ME ABOUT BEING SOMEBODY'S FIANCE AND ET CETERA.

10 Q. DO YOU KNOW WHY THE INVESTIGATOR WOULD TELL YOU THAT  
11 MS. DANG HAD CALLED YOU HER FIANCE WHEN SHE DIDN'T?

12 A. I DON'T KNOW WHY.

13 MS. NGUYEN: THOSE ARE ALL OF THE QUESTIONS I HAVE,  
14 YOUR HONOR.

15 THE COURT: ALL RIGHT. YOU MAY BE EXCUSED. THAT  
16 COMPLETES THE DAY FOR TODAY. WE'LL SEE YOU MONDAY AT 1:00  
17 O'CLOCK AND PLEASE HAVE A GOOD WEEKEND.

18 MR. MCMANIS: EXCUSE ME, YOUR HONOR. THAT'S MONDAY  
19 AT 1:00 O'CLOCK AND NOT 1:30.

20 THE COURT: CORRECT.

21 MR. MCMANIS: THANK YOU.

22 (JURY OUT AT 1:29 P.M.)

23 THE COURT: I'M ASSUMING THE SCHEDULE SAYS 1:00.  
24 THAT'S MY USUAL PRACTICE.

25 MR. MCMANIS: I'M SURE IT IS. I THINK WE STARTED AT

1 1:30 THIS WEEK.

2 THE COURT: I JUST WANTED TO DOUBLE-CHECK BECAUSE  
3 EVEN IF THE SCHEDULE SAID 1:30 AND EVEN THOUGH I SAID AT 1:00  
4 O'CLOCK, YOU SHOULD SHOW UP AT 1:00 O'CLOCK.

5 MR. MCMANIS: WE'LL BE HERE.

6 YOUR HONOR, WE HAD A MATTER THAT YOU MAY RECALL AT THE  
7 RECESS YESTERDAY AFTERNOON INVOLVING REDACTING PORTIONS OF THE  
8 INVESTIGATOR'S REPORT, CAROLE EDMAN'S REPORT, WITH REFERENCE TO  
9 MEDIATION AND WHAT HAVE YOU.

10 AND I SUGGESTED THAT MY FRIEND SEND ME THOSE PORTIONS THAT  
11 SHE WOULD LIKE REDACTED AND WE WOULD MEET AND CONFER AND IF WE  
12 WERE ABLE TO RESOLVE IT, FINE, AND IF NOT, WE WOULD BRING IT UP  
13 TO YOUR HONOR.

14 SHE DID SEND ME OR SOMEBODY SENT ME A NUMBER OF PAGES WITH  
15 PROPOSED REDACTIONS.

16 THE PROBLEM WE'RE WRESTLING WITH NOW IS THAT I'M TOLD THAT  
17 THE INVESTIGATOR, CAROLE EDMAN, RELIED IN PART IN HER  
18 ASSESSMENT OF THE SITUATION ON THE FACT THAT THE MEDIATION OF  
19 THE DISCIPLINE OF OCTOBER 4TH, 2009, WAS APPROPRIATE AND  
20 UPHELD, AND ET CETERA, ET CETERA. SO IT WOULD CLEARLY BE  
21 RELEVANT.

22 THAT SAID, I UNDERSTAND THAT THERE'S A DISCRETIONARY  
23 BALANCING THAT THE COURT NEEDS TO UNDERTAKE IN TERMS OF WHETHER  
24 ITS PROBATIVE VALUE IS OUTWEIGHED BY THE POSSIBILITY OF  
25 CONSUMING TIME AND MISLEADING THE JURY AND THIS AND THAT.

1           THERE ARE SOME PARTS OF THE PROPOSED REDACTION THAT IN MY  
2 JUDGMENT ARE CLEARLY NOT NECESSARY.

3           SO THIS IS A LONG WINDED WAY OF SAYING I'D LIKE TO THINK  
4 ABOUT THIS OVER THE WEEKEND AND TALK FURTHER WITH MS. NGUYEN,  
5 AND I'LL STATE ON THE RECORD THAT THERE WILL BE NO REFERENCE,  
6 AND WE WERE VERY CAREFUL BEFORE WE PUT MR. WILSON'S STATEMENT  
7 UP, WITH THAT STATEMENT TO THE MEDIATION.

8           BUT I'M NOT QUITE READY TO THROW THAT IN YOUR LAP AND IF  
9 WE CAN HAVE THIS TIME BETWEEN NOW AND MONDAY TO SEE IF WE CAN  
10 WORK SOMETHING OUT, I'D APPRECIATE IT.

11           MS. NGUYEN: YOUR HONOR, WE WOULD OBJECT JUST  
12 BECAUSE NOT ONLY WILL I NEED TO PREPARE MY WITNESSES TO START  
13 ON MONDAY AT 1:00 BUT ALSO BECAUSE ALL OF THE EXCERPTS THAT WE  
14 HAVE TO BE REDACTED REFER TO THE MEDIATIONS AND THE OUTCOME OF  
15 THE MEDIATION.

16           I KNOW THAT IN THIS CASE BAY 101 HAS REQUESTED AND THAT  
17 YOUR HONOR GRANTED THE MOTION IN LIMINE THAT WE'RE NOT ALLOWED  
18 TO TALK ABOUT OUTCOME OF THE ARBITRATION.

19           SO I THINK THAT THIS WOULD BE JUST UNDULY PREJUDICIAL NOT  
20 ONLY TO US BUT THAT BALANCING THAT MR. MCMANIS IS TALKING ABOUT  
21 WAS DONE WITH RESPECT TO THE ARBITRATION.

22           SO WITH RESPECT TO THE MEDIATION, IF THEY ARE ALLOWED TO  
23 REFER TO THE MEDIATION OR MS. EDMAN'S INVESTIGATION REPORT IS  
24 ALLOWED IN AND THE JURORS ARE GOING TO BE ALLOWED TO HEAR ABOUT  
25 SOME OF THESE MEDIATIONS AND WHAT HAPPENED AT THE MEDIATIONS,

1 THEN I WOULD REQUEST THAT WE BE ALLOWED TO TALK ABOUT THE  
2 MEDIATION WITH RESPECT TO THE GRIEVANCE FOR THE TERMINATION AS  
3 WELL AS THE ARBITRATION.

4 MR. MCMANIS: I DON'T THINK I EXPLAINED MYSELF  
5 CLEARLY. I DON'T NECESSARILY DISAGREE WITH ANY OF THAT.

6 I'M JUST SIMPLY ASKING, AND I HAVEN'T HEARD THAT THIS HAS  
7 TO BE RESOLVED BEFORE MONDAY AFTERNOON, FOR EXAMPLE, WE GOT  
8 THIS MR. ANDRE THOMAS. MR. THOMAS, THE PARALEGAL, SENT AN  
9 E-MAIL TO MY OFFICE AT 7:30 LAST NIGHT, AND I LOOKED AT IT THIS  
10 MORNING.

11 I'M LOOKING AT ONE PAGE AND IT SAYS THE INVESTIGATOR WAS  
12 UNABLE TO FIND ANY DISCRIMINATORY OR RETALIATION BASIS FOR THE  
13 FACT THAT MS. DANG HAD BEEN GIVEN A COUNSELLING MEMO REGARDING  
14 NOT BALANCING HER ENVELOPES CORRECTLY ON A DAILY BASIS.

15 THEY WANT THAT REDACTED BECAUSE THE FOLLOWING SENTENCE  
16 REFERENCES THE MEDIATION. AT A MINIMUM THAT FOLLOWING SENTENCE  
17 WOULD BE SUBJECT POSSIBLY TO REDACTION, NOT THE FIRST SENTENCE.

18 AND ALL I'M ASKING IS THAT WE HAVE THE WEEKEND TO TRY AND  
19 WORK THIS OUT AND IF WE CAN'T, WE'LL SUBMIT TO YOUR HONOR THE  
20 PORTIONS THAT WE THINK SHOULD NOT COME OUT.

21 THE COURT: WELL, ONE THING THAT HAS CONFUSED ME A  
22 LITTLE BIT, THE ONLY IN LIMINE MOTION WAS WITH RESPECT TO THE  
23 ARBITRATION.

24 MR. MCMANIS: YES.

25 THE COURT: AND THEY THINK THERE WAS GENERAL



1 AGREEMENT THAT THERE WAS NO REFERENCE TO WHAT OCCURRED IN THE  
2 MEDIATION.

3 IS THERE JUST ONE MEDIATION THAT HAPPENED?

4 MR. MCMANIS: WHAT HAPPENED HERE, YOUR HONOR, WAS  
5 THIS: WHEN SHE WAS DISCIPLINED FOR THE OCTOBER 4TH, '09  
6 INCIDENT, SHE FILED A GRIEVANCE AND SHE FILED A COMPLAINT WITH  
7 THE DFEH, AND SHE FILED A DEMAND FOR THE INVESTIGATION WHICH  
8 LED TO THIS CAROLE EDMAN INVESTIGATION.

9 THERE WAS THEN A MEDIATION ARRANGED BY THE UNION, WHICH WE  
10 CONCURRED AND THE MEDIATOR CONCLUDED THAT THE SUSPENSION WAS  
11 JUSTIFIED AND UPHELD AND THAT'S WHEN HER AND HER HUSBAND WALKED  
12 OUT OF THE MEDIATION.

13 THE LATER PROCEEDINGS FOLLOWED HER TERMINATION AND THAT'S  
14 THE SUBJECT OF YOUR ORDER REGARDING A MOTION IN LIMINE.

15 THIS PARTICULAR MATTER WAS NEVER BROUGHT UP ON MOTION.

16 MY FRIEND BROUGHT IT UP FOR THE FIRST TIME YESTERDAY, AND  
17 I SAID LET ME TAKE A LOOK AT THIS AND WE'LL TRY AND WORK IT OUT  
18 AND OTHERWISE WE'LL GIVE IT TO THE JUDGE.

19 AND THEN, YOU KNOW, WE GOT THIS YESTERDAY EVENING AND I  
20 SAID -- I TALKED TO MY COLLEAGUES AND I WAS TOLD ONE OF THE  
21 LEGAL PROBLEMS IS THAT THE INVESTIGATOR RELIED IN PART ON THE  
22 FACT THAT THE SUSPENSION OF OCTOBER 4TH, '09 WAS UPHELD BY THE  
23 MEDIATOR. AND ALL I'M SAYING IS THAT I THINK THAT RAISES A  
24 CONCERN, LEGALLY, ABOUT THE PROPRIETY OF REDACTING THAT.

25 AND IF YOUR HONOR RULES AGAINST ME ON THAT, WHICH YOU

1 MIGHT WELL RULE AGAINST ME ON THAT -- I'M NOT MAKING ANY  
2 PREDICTIONS. MY SECOND POINT IS THAT THERE ARE STILL PARTS  
3 THAT SHE WANTS REDACTED THAT HAVE NOTHING TO DO WITH THE  
4 MEDIATION.

5 SO ALL I'M ASKING FOR IS THAT WE WOULD LIKE A LITTLE MORE  
6 TIME TO LOOK AT THIS.

7 THE COURT: WHAT WITNESS TESTIMONY WILL IT EFFECT  
8 FROM YOUR STANDPOINT?

9 MS. NGUYEN: WITH RESPECT TO BEING ABLE TO TALK  
10 ABOUT THE OUTCOME OF THE MEDIATION.

11 MY CLIENT WILL BE TAKING THE STAND ON MONDAY AND  
12 MR. MCMANIS ALREADY ASKED SOME WITNESSES ABOUT WALKING OUT OF  
13 THE MEDIATION. AND SO I WOULD LIKE HER TO BE ABLE TO TALK  
14 ABOUT WHY SHE WALKED OUT OF THE MEDIATION AND WHAT HAPPENED.

15 AND IF THAT'S THE CASE, THEN IT REALLY OPENS THE DOOR FOR  
16 HER TO TALK ABOUT WHAT HAPPENED AT THE MEDIATION AND THE  
17 ARBITRATION.

18 BUT I KNOW THAT WITH RESPECT -- YOUR HONOR HAD SAID THAT  
19 WE COULDN'T TALK ABOUT THE OUTCOME OF THE ARBITRATION.

20 IN THE INVESTIGATOR'S REPORT, WHAT SHE NOTED WAS ACTUALLY  
21 THE OUTCOME OF THESE MEDIATIONS BEING DECISIONS OF THE  
22 MEDIATOR, ALMOST AS IF THEY ARE BINDING DECISIONS.

23 THE COURT: THERE'S TWO -- ONE OR TWO MEDIATIONS?

24 MS. NGUYEN: THERE WERE THREE ACTUALLY: ONE YEAR  
25 BEFORE THAT SHE ALSO TALKED ABOUT, I THINK IN HERE; AS WELL AS

1 THE ONE ARISING FROM OCTOBER 2009; AND THE ONE FROM THE  
2 TERMINATION.

3 MR. MCMANIS: THE REPORT, THE INVESTIGATOR'S REPORT  
4 WAS PREPARED BEFORE THERE WAS THAT ARBITRATION, WHICH IS THE  
5 SUBJECT OF YOUR ORDER ON MOTION IN LIMINE.

6 IF SHE WANTS TO TALK ABOUT WHAT HAPPENED AT THE MEDIATION  
7 OF HER SUSPENSION ON OCTOBER 4, 2009, TALK ABOUT OPENING THAT  
8 DOOR, I GUESS THAT'S A CHOICE FOR HER TO MAKE.

9 BUT MY POINT HERE IS THAT THE ONLY ISSUE BEFORE THE COURT,  
10 AND I'M SORRY WE'RE TAKING SO MUCH TIME, YOUR HONOR, BEFORE THE  
11 COURT, BUT THE ONLY ISSUE BEFORE THE COURT IS WHETHER OR NOT  
12 THE INVESTIGATOR'S REPORT IN CERTAIN RESPECTS NEED TO BE  
13 REDACTED.

14 AS THAT IS NOT GOING TO BE AN ISSUE WITH HER TESTIMONY  
15 BECAUSE I CANNOT IMAGINE MY FRIEND IS GOING TO BE REFERENCING  
16 THE INVESTIGATOR'S REPORT AND SHOWING IT TO HER, HER OWN  
17 CLIENT.

18 AND THIS IS NOT GOING TO GET BEFORE THE JURY UNTIL WE GIVE  
19 THE CASE TO THE JURY, AND WE CAN SOLVE THE PROBLEM BEFORE THEN.  
20 THAT'S ALL I'M SAYING.

21 MS. NGUYEN: YOUR HONOR, THE MAIN QUESTION ISN'T  
22 JUST THE REDACTION, IT'S THE MEDIATION AND WHETHER OR NOT  
23 EITHER OF THE PARTIES SHOULD BE ALLOWED TO TALK ABOUT THE  
24 MEDIATION AND THE OUTCOME OF THE MEDIATION.

25 MR. MCMANIS: THAT'S A WHOLE DIFFERENT ISSUE.

1 THE COURT: THAT IS A LITTLE BIT OF A DIFFERENT  
2 ISSUE.

3 OBVIOUSLY I CAN'T RULE ON IT WITHOUT SEEING WHAT THE  
4 REDACTIONS ARE.

5 TOMORROW IS A FURLOUGH DAY SO WE HAVE NO COURT TOMORROW.

6 WHAT I COULD SUGGEST IS THAT IF YOU ARE CONCERNED FOR  
7 PREPARATION, IF YOU CAN'T RESOLVE IT BETWEEN YOURSELVES BY THE  
8 CLOSE OF TOMORROW, YOU SEND ME AN E-MAIL AND SET FORTH YOUR  
9 RESPECTIVE POSITIONS, AND I'LL LOOK AT IT OVER THE WEEKEND.

10 MR. MCMANIS: THAT'S FINE, YOUR HONOR. THANK YOU.

11 MS. NGUYEN: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 (COURT CONCLUDED AT 1:39 P.M.)  
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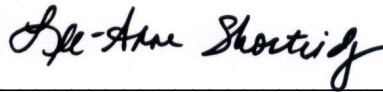
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2  
3 CERTIFICATE OF REPORTERS  
4  
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6

7 WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
13 ABOVE-ENTITLED MATTER.

14 

15  
16 IRENE RODRIGUEZ, CSR, CRR  
17 CERTIFICATE NUMBER 8076

18 

19 LEE-ANNE SHORTRIDGE, CSR, CRR  
20 CERTIFICATE NUMBER 9595

21 DATED: MAY 2, 2013  
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23  
24  
25